Democracy in Poland 2005–2007

THE INSTITUTE OF PUBLIC AFFAIRS

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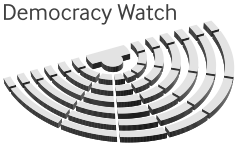

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Introduction: Democracy in Poland 2005–2007

The results of the 2005 elections in a number of Central European Countries raised concerns about the state of democracy in new EU Member States. Populist government coalitions in Poland and Slovakia, anti-government riots in Hungary, orchestrated by the right-wing opposition, and a prolonged period of forming a new government coalition in the Czech Republic, posed the question of whether these countries are backsliding from their commitment to democracy and the rule of law, which had been a necessary condition of their winning the coveted EU membership.

The present volume is a result of independent monitoring of the changes occurring in Poland following the 2005 elections in the areas relevant for the functioning of democracy: the law, institutions and public opinion attitudes. The government coalition, which was established as a result of those elections, came to power promising a radical institutional overhaul of the political system, with the aim of purging corruption from the public life, thus making the state more effective as well as restoring public trust in key institutions of Polish democracy. Last but not least, the parties which formed the new government promised the voters a more just distribution of the fruits of economic growth, which Poland had experienced since the launch of market reforms in 1989. The three parties which formed the coalition sought legitimacy of their project from the fact that none of them previously formed a part of the government coalition. As such they could not be held responsible for the weaknesses of the process of democratic and market reforms initiated after the fall of communism and concluded with Poland's entry into the EU in May 2004. This claim of political 'virginity', coupled with the denunciation of the political, but also economic and intellectual elites, gave the new ruling

coalition a populist orientation, which remained its trademark until the early elections in October 2007 ended its hold on power.

Looking back at the causes of the 2005 upheaval, some observers concluded that it was a result of a backlash against the EU enlargement process and the reform fatigue which affected the societies of the new Member States. Such an explanation may have seemed plausible in view of the anti-enlargement sentiment prevailing among the publics of the old EU-15 countries. One should keep in mind that in the same year 2005 the referenda in France and the Netherlands, two of the EU founding members, led to the rejection of the new Constitutional Treaty, whose aim was to give the EU the institutional reforms necessary to better cope with the challenges of the enlarged union. The 2005 elections provided the sceptics with the ammunition to criticise the enlargement project by pointing out that the disciplinary power of membership works only during the pre-accession period. Once formal membership is achieved, they argued, a new member has little if no incentive to observe the democratic standards it had sworn to. The fact that the populist coalition in Poland included two (junior) parties which two years earlier had urged the rejection of the EU Accession Treaty seemed to further warrant such an interpretation.

Nevertheless, the developments of the last two years seem to indicate that the EU membership continues to be a part of the solution, and not a source of the problems of the Polish political transformation. The high level of satisfaction with the outcome of the accession turned out to be one of the factors which gradually undermined the populists' appeal.

The roots of the 2005 populist victory in Poland lie in a number of persistent problems of Polish democratic transformation. These include economic problems, especially very high levels of unemployment throughout the 1990s and culminating just before EU entry. During those years Poland also suffered from endemic corruption, which – according to Transparency International – was higher than in any other Central European country, except for Romania. Social researchers also indicate low levels of social capital, including low trust in fellow citizens as well as in democratic institutions, and low levels of participation in non-governmental organisations. Last but not least, Polish voters are among the most apathetic in Europe, with election turnouts usually well below 50%. All these factors contributed to the short-lived triumph of populism in Poland in the period 2005–2007.

Populism has accompanied Polish democracy since its inception in 1989. In the 1990 presidential elections, a completely unknown candidate Stanisław Tymiński managed to overtake the first Polish non-communist Prime Minister Tadeusz Mazowiecki, if only to be defeated in the final round by the hero of the Solidarity Movement Lech Wałęsa, himself not immune to populist rhetoric. During the 1990s the discontent with market reforms helped bring reformed communists back to power, while the opponents of Poland's negotiated transition, sealed with the round table agreement, continued to challenge the status quo with their calls for de-communisation and the vetting of communist secret police collaborators (lustration). At the same time, the Polish Catholic Church was not shy about using the moral authority gained from its resistance to a communist dictatorship to make demands for legal and institutional changes reflecting "the Christian values" allegedly shared by a majority of Poles.

Despite these challenges, the process of the consolidation of Polish democracy continued. In 1997 the parliament adopted a new democratic constitution, which proclaimed the "3rd Republic of Poland" as a "democratic country ruled by law". The constitution was subsequently approved in a popular referendum, despite strong criticism from the right-wing parties not represented in the parliament.

One of the key factors stabilising the Polish political scene during the difficult early years of transition was the idea of Poland's "Return to Europe". A great majority of the society and the political classes agreed that Poland should re-join the western world though membership in NATO and the European Union. The hardships of the reforms were accepted as a necessary price for achieving this aim and the politicians questioning European integration were effectively marginalised by voters and mainstream political parties.

The discontent with the state of Polish democracy gained a new intensity after Poland joined the EU. The post-communist government led by PM Leszek Miller, which came to power in 2001 with unprecedented popular support, successfully continued and completed membership negotiations with the EU and won the accession referendum with a comfortable majority. At the same time, Miller's government was plagued by a series of corruption scandals, which led the public opinion to believe that Polish democracy was in a very poor shape and needed a thorough "revamping". The state of moral panic affected not only the opposition to the government but also the liberal media and the opinion makers, who religiously followed the revelations of the parliamentary investigation committees established to uncover corruption in high places.

For the right-wing opposition, the alleged moral decay of the post-communist Miller government was proof of the "original sin" of Poland's road to democracy, i.e. lack of de-communisation and lustration. This allowed (as they claimed) the former communists to assume the positions of political and economic power and to create the "phony democracy" of the 3rd Republic. The right-wing opposition – both in its more moderate conservative version as well as its radical/populist one – proclaimed the need to establish the "4th Republic" based on republican political ethos and the moral teachings of the Catholic Church. In this way, the crusade against corruption was coupled with anti-communism and social conservatism.

The present publication purports to examine the consequences of the attempts to implement the idea of the 4th Republic. Each of the chapters starts with a short "opening balance", assessing the initial state of affairs in a given area and then proceeds to analyse more closely the developments following the 2005 elections and the formation of a populist coalition.

The opening chapter, authored by Wojciech Sadurski, analyses the functioning of the Constitution and the Constitutional Court as well as the ideas for constitutional reform put forward by the main party of the coalition, Law and Justice (PiS). In the situation where the coalition lacked enough votes in the parliament to change the existing Constitution, its politicians sustained a campaign aimed at discrediting both the 'post-communist' constitution and judges of the Constitutional Court. At the same time, the rulings of the Constitutional Court brought down a number of political projects of this government, including the vetting of an estimated 2 million citizens holding positions of public importance. The Court decided that the law breached a number of basic constitutional rights of citizens, including the presumption of innocence. As Professor Sadurski argues, this was just one example of a number of PiS policies that breached the letter or the spirit of the Constitution.

The control of the legislative process was instrumental in fulfilling the objectives of institutionalising the "4th Republic". Although the coalition with the radical parties gave PiS a comfortable majority, they also used their control of the parliamentary agenda and numerical majority in parliamentary committees to marginalise the opposition and prevent any substantive debates on the most controversial legal changes. The institution of public hearing, giving citizens a chance to voice their opinion on bills debated in the parliament, also fell into neglect. Wiesław Staśkiewicz describes in the chapter

on the legislative process how under the PiS-appointed Speaker, the parliament came close to becoming a voting machine rather than a place of debate and its controlling role vis-à-vis the government was nil.

In the chapter on the party system, Radosław Markowski examines the consequences of the lack of consolidation of the political parties in Poland, evident in comparison to other "young" democracies from Central and Eastern Europe. It can be argued that it was this absence of a stable and predictable party system and volatile electorates that made the capture of power by radicals and populists in 2005 possible. The decline of the post-communist left led to the monopolisation of the political debate by the right. In addition, the record low turnout in the 2005 elections allowed Law and Justice to form a government even though this party was backed by only 10.4% of eligible voters.

Adam Bodnar and Michał Ziółkowski examine the impact of Law and Justice policies on the justice system and security services. The disagreement as to who should control security services was the key reason for the failure of the "grand coalition" between PiS and the Citizens' Platform in 2005. After PiS entered the coalition with the two radical parties, it monopolised its control over these services. The critics of the government accused it of using the security services against political opponents, e.g. by widespread surveillance without proper control of the courts. Spectacular arrests of suspects and media leaks from secret services became the everyday reality of Polish political life. After the 2007 elections the new parliament established special committees to investigate these alleged abuses.

The Ministry of Justice, under a young, ambitious and media savvy Zbigniew Ziobro became a focal point for the PiS crusade against "legal impossibilism". This expression was coined by Law and Justice politicians to describe the constraints faced by the executive branch of the government in its attempts to bring "justice for all" in the form of "liberal" laws (including the Constitution) as well as corporations of lawyers and judges. Minister Ziobro prepared a number of bills aiming at restricting the independence of prosecutors, attorneys and judges as well as increasing the repressive character of the penal code.

In order to bring about a breakthrough in the fight against corruption, a new institution was established: the Central Anticorruption Bureau (CBA). The new institution was given a large budget and broad powers to investigate the alleged cases of corruption, including political corruption. The formula of the

CBA was from the beginning criticised by legal experts and non-governmental organisations (including the Polish Helsinki Foundation, the Stefan Batory Foundation as well as the Institute of Public Affairs) for its lack of accountability and excessive concentration on "hard power" rather than on the prevention of corruption. The parliamentary opposition worried that the CBA would be used against it for political rather than legal aims (although it should be noted that the Citizens' Platform voted in favour of the CBA, only later joining its critics). The analysis conducted by Adam Bodnar and Dawid Sześciło in the present volume indicates that these critical voices, albeit disregarded by the government, proved largely correct. In fact, the CBA played a key role in an attempt to implicate PiS coalition partner and Deputy PM Andrzej Lepper in a corruption scandal, which led to the decomposition of the coalition and early elections in October 2007.

Other important areas for the quality of Polish democracy, such as public administration and the non-governmental sector, also came under heavy pressure from the government seeking to expand its influence in all areas of public life (see the chapters by Krzysztof Burnetko and Grzegorz Makowski).

At the same time, as Lena Kolarska-Bobińska describes in the chapter on citizens' activity and public protest, the government policies led to a mobilisation of different social groups and milieus on a scale unseen in Poland since the rise of the Solidarity Movement in 1980.

As Beata Roguska shows in her chapter on public opinion, the two years of the "4th Republic" experiment paradoxically brought about the strengthening of public trust in democracy. The authoritarian rhetoric of PiS, which enjoyed some public support in 2005, had been compromised by a string of political scandals as well as the cynicism of the proponents of the "moral revolution" who allied themselves with right-wing extremists and shady businessmen. At the same time, the continuous economic growth, falling unemployment as well as overall satisfaction with Poland's membership in the EU gradually eroded support for the populist alternative in politics.

The Polish experiment with "illiberal democracy" has been effectively resisted by political opposition, independent media and civil society, as well as other democratic institutions, most notably the Constitutional Tribunal and the judiciary. The systematically growing number of opponents of the government led to the electoral tsunami of 2007 when voters turned out en masse to vote against the government.

The 2007 elections seem to have brought the Polish political scene a step closer to "European standards". The fact that both parties of the new coalition – the PO and PSL – have long been members of European People's Party seems to have both symbolic and practical meaning in this respect. In the new parliament the coalition will face the opposition not so much from the left but from populist Law and Justice Party supported by President Kaczyński.

One may suppose that a condition of further "Europeanisation" of Polish politics is the rebuilding of the credible left-wing opposition to the centre-right government of PO-PSL. Such opposition could attract part of the economically egalitarian electorate of PiS and thus decouple the mix of egalitarianism and conservatism that produced the 2005–2007 populist coalition. The credible European left still seems to be a work-in-progress as it still has to tackle its post-communist legacy.

At the same time, many of the problems of the Polish transformation that were turned into the slogans of the "moral revolution" in 2005, including the poor quality of political life, weak public administration, corruption and the public's mistrust of the politicians, are unlikely to disappear any time soon. Neither will the public's concern with these issues, as testified in the relatively strong support for PiS in the 2007 elections. These issues will have to be effectively addressed by successive governments. A number of political reforms strengthening democratic institutions, division of powers and checks and balances within the government should also be put on the agenda if Poland wants to avoid the repetition of the abuses of power characteristic of the 2005–2007 government. Designing and implementing such reforms remains a challenge for politicians as well as think-tanks and other civil society organisations.

The same is true about the economic divisions in the country, which (as the results of the 2007 elections clearly demonstrated) continue to play a role in determining the Polish political landscape. Although statistical data seem to indicate that the fast economic growth that Poland has enjoyed also benefits the poorer segments of the society, policies aimed at increasing social cohesion, making good use of EU funds, should supplement the 'invisible hand of the market' here.

Above all, Poles need to start trusting each other as well as their democratic institutions much more. It remains to be seen whether the new Polish Prime Minister Donald Tusk and his government can make good on the promise to base its policies on trust in citizens and whether the citizens will reciprocate.

Wojciech Sadurski

The Constitutional Order

Introduction

The political system model in Poland is a constitutional democracy. Such a political system sets certain limits for actions designed to fulfil the democratic will of the nation. Those limits, arising from the provisions of the Constitution, are the following:

"-procedural limitations- binding political decisions must be taken following the procedures established only by the Constitution" (ensuring the rightness and fairness of decisions)

"-limitations of jurisdiction- constitutional bodies and institutions may take decisions only within the scope of jurisdiction specifically granted to them by the Constitution" (ensuring the division and balance of power)

"-limitations of contents- decisions of public bodies cannot exceed the material limits determined by the Constitution" (ensuring the respect and observance of the fundamental constitutional rights)

Since the Constitution of 1997 contains provisions that limit the authorities, it fulfils the requirements of liberal constitutionalism. However, the constitutionality of a given democratic system is not just the contents of the constitution but also the degree to which its provisions are respected by the government. Since legislation is an area where the degree of understanding of the Constitution and the willingness to observe it are clearly manifested, this chapter will focus on the issue of the constitutionality of draft laws passed on the initiative of the ruling government from 2005 until 2007 (Law and Justice – PiS).

Before we discuss specific legislative proposals, one observation is in order. The first striking example of the government's disrespect for the Constitution in force was the whole symbolism of the so-called 4th Republic. Constantly talking about building the "4th Republic" was evidently targeted also against the text of the 1997 Constitution, which is, as its Preamble states, the Constitution of the "3rd Republic". The Law and Justice party, both before and after the 2005 elections, referred to the Constitution in an openly negative way, which is shown by their proposals for changes in this fundamental act. The very fact of recommending changes to the Constitution is nothing wrong and it may even be positive if it intensifies the public debate on constitutional matters. However, at the same time, it reveals the negative attitude to the Constitution of those who suggest the changes. It is therefore worthwhile to take a closer look at the changes proposed by PiS back in 2005. Here follows a brief review of the proposals:

– Increasing the power of the President and symbolically excluding him from the separation of powers – Trias Politica.
– The right granted to the President to issue decrees with the force of a parliamentary act, without the Sejm having the possibility to amend them.
– The President appointing one third of the Constitutional Tribunal.

The PiS proposals had numerous omissions in relation to the Constitution.

Here are some of them:
– Omitting the principle of not forcing anyone to participate in religious practices.
– Significant limitation of the right to freedom of conscience.
– Omitting the guaranteed substitute service for those whose religious convictions do not allow them to perform military service.
– Certain omissions as to the structure of parental rights.

The PiS coalition partners also submitted numerous constitutional amendments and proposals. Self-Defence supported the strengthening of the role of the President by subordinating all executive power, including the government, to him and by vesting in him the right to appoint the President of the National Bank of Poland and by giving him the possibility to shorten the term of the parliament. In their proposals, Self-Defence tended to strengthen the social-economic rights, weakening other liberties at the same time. Whereas LPR (League of Polish Families) presented an idea for constitutional changes providing for a seven-year term of office for the President, creating the post of a Vice President, important changes in the structure of the Senate

(Senate as a chamber representing the Polish diaspora), and ensuring the right to life "from the very moment of conception" to all. Moreover, LPR, the same as PiS, supported the invocation to God and to the Christian heritage of the nation in the Preamble of the Constitution.

Therefore, the three coalition parties shared common constitutional ideals which concerned increasing the role of the President and limiting certain constitutional rights and freedoms. The numerous references to religious symbolism, indicating that the proposals were drifting away from the principle of the impartiality of the state in religious matters, were also significant.

This chapter will be a selective and subjective review of certain legislative proposals of the PiS government from 2005 until 2007, including those that met with criticism at the Constitutional Tribunal as well as certain decisions of those holding power, which all together form a picture of the government's attitude towards the Constitution. I will also draw attention to arguments used before the Constitutional Tribunal defending the legislative solutions supported by the authorities. Moreover, emphasis will be placed on one successful and one unsuccessful attempt to amend the Constitution.

Freedom of speech

The Constitution of the Republic of Poland ensures the freedom of speech (Art. 54), and the freedom of the press (Art. 14). The European Court of Human Rights draws attention to these freedoms, recognising them as one of the pillars of a democratic society.

However, in Poland during the rule of the Law and Justice party there were attempts to redefine the meaning of these freedoms. An example of that can be the Act on transformation and changes in the division of responsibilities and powers of state bodies in the area of telecommunication, radio and television broadcasting, pronounced contrary to the Constitution in Art. 6 point 1a, by the Constitutional Tribunal. In this case, the legislators wanted to empower the National Broadcasting Council to take action with regard to protecting the principles of journalism ethics. That meant that the powers of a politicised state body, which the National Broadcasting Council actually is, would include setting the standards of journalism ethics and enforcing the observance of those principles. This authority could be used for actions normally described as censorship. The objections raised against such a solution were rebutted by the Sejm Speaker with a rather peculiar argument: "arguments for

the inconformity with the Constitution of the adopted legislative solution are based not so much on an analysis of the provisions of the Constitution and the questioned act of law but rather on anticipation of the National Broadcasting Council's actions and predicting their negative effects".[1] Evidently, the Speaker did not realise that all the criticism of any newly introduced anti-freedom provisions must be based on such anticipation.

In fact, the newly formed Council expressed their own conviction that protection of the freedom of speech was not going to be their priority. The evidence of that were the fines imposed in March 2006 on Polsat television and the Tok FM radio stations. In the opinion of the National Broadcasting Council, the fines were a response to the contents which ridiculed disabled people and prayer, in the case of Polsat, and violating the personal interests of the President, in the case of Tok FM. Such acts are subject to penalty under Art. 18 of the Act on Radio and Television Broadcasting and Articles 10 and 12 of the same Act, respectively. With those verdicts, the Council gave a sign that by placing the issues of "journalism ethics" over their other responsibilities they did not make the protection of the freedom of speech their main priority. However, it is a provision of the Constitution itself that clearly states what the priorities of the National Broadcasting Council are: "The National Council of Radio Broadcasting and Television shall safeguard the freedom of speech, the right to information as well as safeguard the public interest regarding radio broadcasting and television" (Art. 213.1).

Another threat to the freedom of the press was the Vetting Act, which was also appealed against before the Constitutional Tribunal. The Act treated journalists as people subject to the obligation to file a vetting declaration, under the pain of losing the right to practice their profession. While drawing attention to the "public functions" performed by journalists, the Act included this professional group into the category of "public figures", covered by the obligation to submit such a declaration. This measure had become the main reason for criticism on the part of the Constitutional Tribunal. However, the Prosecutor General, defending the Act before the Tribunal, argued that: "the influence that media and individual journalists have on the public opinion justifies the actions taken by the authorities who aim at ensuring the proper ethical and moral standards of this group".[2] Such reasoning indicates that the authorities considered it a responsibility of the state to ensure the ethical and moral standards of the press, obviously on the basis of the norms set by the authorities themselves.

[1] Verdict of the Constitutional Tribunal of 23 March 2006, file no. K 4/06, p. 13.
[2] Verdict of the Constitutional Tribunal of 11 May 2007, file no. K 2/07, p. 54.

It was also typical of the elite in power until October 2007 to insist on the extended scope of meaning of the term "insult to a public functionary". The broader the scope of expressions falling into this category was, the more blurred the border between such an insult and a criticism of the authority became. And the more blurred this border was, the more limited the area where criticism is possible was. In that case too, the Speaker of the Sejm represented a rather peculiar opinion according to which public functionaries deserve broader protection of their dignity than private persons. This, however, is evidently contrary to the judicial decisions of the European Court of Human Rights, according to which the limits of admissible criticism are broader with respect to public figures than private people.

Article 212 of the Criminal Code is also very disturbing. This provision considers it illegal to spread information even about a true accusation if that could expose a person to loss of trust and humiliation. Even though only a few people have been sentenced under this Article, as the Council of Europe Commissioner for Human Rights stated, a certain "signal creating an atmosphere of fear" was sent. However, the Polish government did not seem to be interested in abolishing this provision.

The last example of the unusual attitude of the authorities towards the principle of the freedom of speech was a provision, adopted by the parliamentary majority, establishing the crime of defamation of the Polish nation. The issue concerns expressing opinions on the responsibility of the Polish nation for communist or Nazi crimes. No matter how outrageous and absurd such claims might have been, the freedom of speech should also extend to controversial views. A provision of the Constitution says the following: "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights" (Art. 31). This provision leads us to assume that the defamation of the Polish nation does not introduce any of the above-mentioned conditions and therefore prohibiting it under the pain of criminal liability is contrary to the Constitution. It seems that introducing such laws aimed only at enhancing the patriotic image of the government.

Freedom of assembly

In Art. 57 the Constitution ensures the freedom of peaceful assembly. In this matter, too, the European Court of Human Rights adopted a very firm stance, considering this freedom very important. Admissible limitations of this freedom were set forth by the Constitution and they applied mainly to issues of public safety, protection of the environment and respecting the freedom and morality of other people. However, a practice developed among authorities which consisted in "finding legal loopholes". It was started by Lech Kaczyński, when, being the mayor of Warsaw, he banned the organisation of the Equality Parade (Warsaw Pride), invoking various road traffic regulations, whereas the real reason for the ban was the lack of approval of the city authorities for the views represented by the Parade's organisers, which could be seen from numerous statements of the city hall representatives.

Others followed that example and several other cities also banned certain manifestations. That often resulted in illegal assemblies and police intervention. Some decisions of municipal authorities, such as in Poznań, were later considered illegal. The issue was also examined by the Constitutional Tribunal, which condemned the practice of finding legal loopholes and unequivocally stated that it was an obligation of the authorities to guarantee the freedom of assembly to everyone, regardless of whether they share certain political views or not.

Another interesting issue was the reaction of the authorities to a remark of the Ombudsman who noticed that in the case of certain assemblies of religious nature, for instance pilgrimages, such methods had never been used. The ruling parties, using the voice of the Sejm Speaker, seemed to express the view that such assemblies of a religious nature should enjoy a privileged status whereas the Constitution also ensures the freedom of non-religious assemblies.

Regarding the ban on the Equality Parade, the European Court of Human Rights also expressed its opinion. It found the ban on the organisation of that event violating certain provisions of the Convention on Human Rights. The Court also stated that the Mayor of Warsaw's aversion to "homosexual propaganda", expressed even in the press, might point to the real reasons behind his decision. In spite of the unequivocal verdict of the European Court, the politicians of the ruling party did not change their views on the freedom of assembly.

The Ministry of Culture and National Heritage drafted a law on the sites of national remembrance stipulating that at such sites special rules would be in force, regulating the organisation of public assemblies. The law was clearly designed to curb the freedom of assembly. The work on this law was discontinued because of early elections.

State and religion

The issues of the relation between the state and religion seem to be quite well and clearly regulated in Poland. They are governed by certain provisions of the Constitution and by the Concordat. According to these arrangements, Poland is a state of both the believers and the non-believers and the authorities remaind impartial as to religious convictions and ensure the right to freedom of conscience and religion to everyone. All of the more detailed questions also seem to be regulated by certain entitlements and rights, for instance to possess churches or to refuse to disclose one's religious beliefs or by certain bans, such as for instance a ban to force someone to participate in religious practices, etc. Generally, the relations between the state and religion prevailing in Poland are usually referred to as "friendly neutrality". In accordance with this "friendly neutrality", it should be assumed that:

– "the state shall not favour any religion as opposed to other religions and it shall not favour religion as opposed to analogical behaviour not based on religious motivation"
– "the state shall not subsidise any enterprises or practices whose predominating objective is of a religious character"
– "the state shall not pass universally binding laws whose only or predominating justification is religious motivation"
– "state officials, in connection with performing their state functions, shall not show their religious beliefs in an ostentatious way and shall not participate, as public functionaries, in ceremonies or rituals of a purely religious nature"
– "the state shall not interfere with issues which constitute the internal affairs of the churches and religious associations, and especially with the issues related to official appointments within a given religious organisation"

All the above principles were violated during the PiS-led government, which can be seen by the three main examples of this violation.

Subsidising of religious enterprises and institutions by the state

This principle has been violated in the most evident way in the case of state budget expenditure for the Shrine of God's Providence in Warsaw. In the budget for the year 2006 a specific provision was included in the amount of 20 million PLN, and in the budget for the year 2007 – in the amount of 40 million PLN; both amounts were intended for the Shrine. Explanations that subsidising this project was related to the "protection of national heritage" seem incomprehensible as it is difficult to talk about any heritage in the case of something that has not been built yet.

Another issue that also seemed problematic concerned the subsidies granted by the state to higher education institutions of a strictly religious character, such as the Papal Theological Faculty in Wrocław, the Jesuit University of Philosophy and Education "Ignatianum" in Cracow or the Papal Theological Faculty in Warsaw.

Religion at schools

The Constitution of 1997 sanctioned the status of religion as an optional subject. However, on 13 July 2007, the Minister of Education, Roman Giertych, issued an ordinance which ordered that the mark in religion be taken into account when calculating the school-leaving average mark. That was equivalent to making religion an obligatory subject. The students who did not wish to attend religion classes faced a discouraging prospect of real problems, for instance when applying to secondary school. The alternative of ethics classes was only an illusion, because ethics classes are available only in 350 out of 32,000 schools. Moreover, some announcements appeared that religion might become one of the subjects to be taken at the final secondary school examination. All that shows that the requirement included in the Constitution that the rights of other people shall be respected in the course of religious instruction was violated.

Interference of state authorities with church matters

In Poland, there is a principle of the impartiality of the state towards the church, which in fact means non-interference on both sides. However, the events of 2006, connected with the appointment of Archbishop Stanisław Wielgus to the office of the Metropolitan Archbishop of Warsaw, seem to cast a shadow on the non-interference of state authorities into the internal affairs of the church. The unfavourable attitude of the President towards that nomination and the involvement of the Ombudsman, going beyond the responsibilities of his office, which resulted in cancelling the installation of the archbishop, raises certain doubts.

Right to privacy

The right to privacy, included in the Polish Constitution, does not allow gathering information about a person beyond what is necessary in a democratic state, but it also means the right of a person to control the availability of this information to other people. This right was evidently violated by the Vetting Act, under which the documents collected by the Institute of National Remembrance, consisting, to a great extent, of the files of the former security services (SB), were to be posted on the Internet in the public domain. The fact that sensitive information was not to be made available does not change the fact that the Act was contrary to the Constitution.

The threat to the right to privacy also seems to be associated with the unclear scope of powers of the recently created Central Anticorruption Bureau. These concerns are confirmed by the case of taking over the medical documentation of the Ministry of Interior Hospital in May 2007.

Presumption of innocence

Article 42.3 of the Polish Constitution says: "Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court". However, the Minister of Justice, Zbigniew Ziobro, after the arrest of a cardio-surgeon from the Ministry of Interior Hospital, Doctor Mirosław G., made the following statement: "Nobody ever is going to be deprived of life by this man". This statement contradicts the above quoted constitutional provision, which shows that Minister Ziobro did not follow the rule of the presumption of innocence or rather, as his later statements testify, he did not quite understand its meaning. The European Court has more than once voiced its opinion on such matters and it has always sided with the right to the presumption of innocence.

Another threat to the principle of the presumption of innocence was the above-mentioned Vetting Act, since under this Act the files of all those people that security services (SB) had considered as their collaborators were to be published. Such a solution could have resulted in stigmatising the people found in such a catalogue, which would have been the equivalent to depriving them of the right to be presumed innocent. The presumption of innocence aims at protecting people from exactly such stigmatisation and moral condemnation that follows it.

Equal rights

The Constitution of Poland forbids discrimination on any grounds and, with the supplement in the form of the Convention on Human Rights and the European Union Charter of Fundamental Rights, we can talk about the prohibition of discrimination on the grounds of sex, race, skin colour, language, religion, political and other views, membership in an ethnic minority, property, age, disability, ethnic and social origin and sexual orientation. All manifestations of such discrimination are forbidden in Poland. However, during the period under study politicians holding public posts could not understand that the statements they made did not constitute exercising their right to freedom of speech but, because of their possible influence on state officials, such statements had a special character.

We experienced numerous examples of verbal discrimination from those who held power. Some homophobic statements were made by President Lech Kaczyński, who saw a threat in the "homosexual propaganda". Also the politicians from LPR (League of Polish Families), led by the Minister of Education Roman Giertych, made fighting this "propaganda" their chief task. The Minister himself described homosexuality as "deviation" and "perversion". It was characteristic for them to support school textbooks which described homosexuality as an unnatural inclination connected with the inappropriate hierarchy of values. Thomas Hammarberg, the Commissioner for Human Rights, found such a depiction of homosexuality offensive. In response to the Commissioner's criticism, Polish authorities stated that their country of Christian roots cannot find any understanding for unnatural inclinations. One may say that it is, in a sense, an admission to holding a discriminatory stance.

In the area of racial discrimination, Polish law has been imperfect for many years and it has significantly departed from the standards set by the law of the European Community. The PiS government worked on amendments to that law but the slow pace of those works also raised concern. As far as equal rights for women are concerned, the abolition of the office of the Government Plenipotentiary for the Equal Status of Women and Men was another negative sign. The Department for Women, Family and Combating Discrimination, created to replace the Plenipotentiary's Office, seemed to direct its main efforts elsewhere.

The discriminatory attitude became apparent in a restrictive attitude to abortion. Under Polish law this procedure is allowed only in three situations: a threat to the life and health of the mother, irreversible damage of the foetus, and

a suspicion that the pregnancy may be a result of a crime. However, even in these situations the procedure is sometimes unavailable, which has been condemned by the European Court of Human Rights when it considered the case of Alicja Tysiąc, who was refused an abortion despite the fact that her pregnancy would cause severe damage to her eyesight. The unfavourable attitude of the authorities, and in particular of one of the coalition partners LPR, to abortion, resulted in a situation where in many cases the authorities remained idle when the constitutional rights of women in Poland were not observed.

Act on crisis management

The Constitution of Poland very clearly defines the character of extraordinary measures, enumerating their three forms: martial law, a state of emergency or a state of natural disaster. However, on 26 April 2007, on the government's initiative, the Act on crisis management was passed. The Act introduced the notion of a "crisis situation", in which a catalogue of actions that the government may undertake was established. A disturbing aspect was that a possibility to use the armed forces appeared among them. Since the "crisis situation" itself was not precisely defined and the Act left it to the authorities to decide on this matter, it seems dangerous that as one of the main characteristics of a state of crisis the Act considers "breaking or damaging of social bonds". It may therefore be possible that a strong aversion of the society towards the authorities may be identified as a state of crisis. Such arbitrariness left in the hands of the authorities raised concern.

Attitude towards the Constitutional Tribunal

The main task of the Constitutional Tribunal is to control the conformity of laws with the Constitution. Since the provisions of the Constitution are often vague, it is the Tribunal that must present the interpretation of the provisions of the Constitution and adjudicate about the conformity of new laws with the Constitution. The verdicts of the Constitutional Tribunal are final. That is why very often the attitude of the authorities towards the Tribunal reflects their attitude towards the Constitution itself. In general, the very criticism of the Tribunal's verdicts is not something to be condemned. Politicians holding power should, however, avoid making an impression that they are trying to exert pressure on the Tribunal with their public statements or that they are taking vengeance, in a way, with their negative comments on a verdict they do not like. And it is certainly unacceptable not to abide by the Tribunal's verdicts. There are also some illegal actions that undermine the constitutional

role of the Tribunal. They include failure by the President to submit motions for checking the conformity with the Constitution when at the same time the President publicly expresses doubts as to the conformity of an act with the Constitution; offensive comments addressed to the current members of the Tribunal, failure to execute the Tribunal's decisions, attempts at changing the procedure of appointing members of the Tribunal, etc. During the PiS-led government, the following unconstitutional behaviour was observed:

The President and the preliminary control of parliamentary acts

The Constitution defines ensuring the observance of the Constitution as one of the primary responsibilities of the President. For that purpose, the President has, as the main tool in his disposal, a possibility to be the first one to send an act to be checked for its conformity with the Constitution, even before signing it. It is indeed his duty to do so, therefore if the President, suspecting the unconstitutional character of an act, fails to send it to the Constitutional Tribunal, he is breaking the law. While the predecessors of Lech Kaczyński used this procedure, in the period under study he did not resort to it, not even once. Furthermore, having signed the Vetting Act, one of the most controversial statutes in recent years, the President expressed his objections as to the conformity with the Constitution of some of its parts. By doing this, the President violated his constitutional duties and showed lack of respect for the institution of the Constitutional Tribunal.

Offensive remarks directed at the Tribunal and its judges

Verbal attacks of the government at the Constitutional Tribunal were numerous, chiefly from the Prime Minister Jarosław Kaczyński. He accused the Tribunal judges of political affiliations, threatened them that he would look closely at their life stories, and accused them of opportunism and placing the interests of the lawyers above the good of the state. There were also some symbolic affronts such as the absence of the President and the Prime Minister, contrary to the established custom, at the annual general meetings of the judges of the Constitutional Tribunal in 2006 and 2007.

Exerting pressure on the Tribunal in order to obtain a particular decision

More than once the Prime Minister exerted pressure on the Tribunal even before it returned the verdict, and he even threatened to dissolve the Tribunal. The best example here may be the statement made before the Tribunal returned its verdict on the expiration of mandates of the community

leaders or mayors. As he said, "I hope that there will be no circus legal tricks in the Tribunal".[3]

Failure to carry out the verdicts of the Tribunal

Those in power have an obligation to carry out the decisions of the Tribunal, but at the end of the parliamentary term over twenty verdicts of the Tribunal were still waiting to be carried out.

Attempts to change the composition and the procedures of the Tribunal

In June 2007, the ruling party prepared an amendment of the Act on the Constitutional Tribunal. That amendment would, to a great extent, make the president of the Tribunal dependent on the authorities; the authors of the amendment did not even hide the fact that these were their motives. The main provisions of the new act concerned shortening the President's term to three years and introducing an obligation to consider the cases in the order of their submission. Those solutions would, in an obvious way, make the Tribunal president politically dependent and would make it impossible to treat certain particularly urgent cases as a priority. If adopted, the amendment would weaken the role of the Tribunal and would deprive it of its independence.

Passing legislation contrary to the established line of judicial decisions of the Tribunal

Consciously proposing acts contrary to the previously established line of adjudicating of the Tribunal is contrary to the Constitution. And that was exactly what happened in the case of the Vetting Act of October 2006, where the definition of collaboration with the security service (SB) was defined in a much broader sense, a sense which had been rejected earlier by the Constitutional Tribunal and which significantly narrowed the meaning of collaboration.

Appointing members of the constitutional bodies

In Poland, a custom has been established according to which in appointing the members of bodies with more than a one-person membership, whose members are proposed by the parliament or the President, the ruling force tries to share the membership with the opposition. In the two main bodies, the National Broadcasting Council and the Constitutional Tribunal, this principle, previously observed, was abandoned under the rule of the PiS-led government.

[3] "Gazeta Wyborcza" 13 March 2007.

Only the candidates of the ruling coalition were appointed to those bodies. A similar key to filling the official posts could be observed in the case of the Council of the Institute of National Remembrance or the president of the National Bank of Poland. In addition, in the latter case, the party appointment coincided with the considerable incompetence of the candidate.

Amending the Constitution

A certain value of the current constitution, although not an absolute value, is its permanence. Recognising the superiority of the Constitution should therefore manifest itself in the assumption of its principal unchangeability. The changes should only be made in exceptional situations. In this area, the PiS-led government exercised some restraint, by proposing amendments to the Constitution only twice and introducing such a change only once. The change that was introduced made it possible for Poland to adopt the law on the European Arrest Warrant, which removes the absolute constitutional ban on the extradition of Polish citizens. The necessity to implement that change was signalled by the Constitutional Tribunal, so the President submitted a draft amendment of the Constitution, adopted by the Sejm, with minor changes, with the support of a large, cross-party majority. It is considered an exemplary democratic action in the area of constitutional amendments.

The situation was different in the case of the other proposed change. That change involved introducing an amendment to the Constitution on protecting life "from the moment of conception" and was directed against the liberalisation of the abortion law in the future. In fact, however, it was, to a large degree, a matter of toughening the legal status. Different proposals for that amendment raised many controversies and discussions. Eventually, all five drafts submitted to vote were rejected. That amendment was lost, to a great extent, because of a great number of similar, more compromising ideas. They were submitted both by the President and the Prime Minister. It can be assumed that submitting those drafts aimed at relieving the tension arising from the original proposal. Such actions should be counted as positive moves of the government.

Conclusions

An alarming conclusion from the above discussion is an observation that in the period under study the PiS government, in a number of its legislative and executive actions, expressed its irreverent attitude towards the Constitution in

force. As far as the acts of the parliament are concerned, the disrespect for the Constitution was the most visible in the case of:

– the Vetting Act (infringing on the civil liberties, the right to privacy, the right to the presumption of innocence and others)

– Act on the transformation and changes in the division of responsibilities and powers of the state bodies in the area of telecommunication, radio and television broadcasting (infringing on the freedom of the press and violating the regulations on the powers of the President)

– Act on crisis management (allowing actions that might lead to restricting the constitutional rights and freedoms)

– acts directly subsidising religious enterprises and institutions

– announcements of changes in the Act on the Constitutional Tribunal (subordinating the Tribunal to the executive authority)

There were also actions violating the Constitution but not having a statutory nature, and therefore not subject to the control of the Constitutional Tribunal. Those included:

– hostile comments of people holding power directed at the Constitutional Tribunal

– discriminatory remarks addressed to certain categories of citizens

– the President's neglect of the obligation to initiate the process of constitutional control in cases when there were suspicions that an act of parliament may be unconstitutional

– statements violating the principle of the presumption of innocence

– appointing representatives of only one party to fill the vacancies in the collective constitutional bodies

– statements and penalties signifying the restriction of the freedom of speech

– failing to ensure appellate procedures in situations when it was impossible to execute one's constitutional rights

– actions violating the principle of the impartiality of state authorities towards religion

Democracy must find the balance between the "rule of the majority" and "constitutionalism". Briefly speaking, those who are in majority are supposed to rule but on the basis of certain established, unchangeable and respected

rules. Unfortunately, between 2005 and 2007, democracy in Poland was understood by the authorities only in a majoritarian way, using the "winner takes all" principle, with no respect for the other element, constitutionality, understood in a liberal manner, i.e. establishing a strict framework which must be respected by the will of the majority.

Wiesław Staśkiewicz

The Legislative Process

> *The sovereign of a Commonwealth, be it an assembly or one man, is not subject to the civil laws. For having power to make and repeal laws, he may, when he pleaseth, free himself from that subjection by repealing those laws that trouble him, and making of new….*
>
> Thomas Hobbes, *The Leviathan*

Introduction

In this chapter, I will analyse the legislative activity of the 5th Term of the Sejm (from 19 October 2005 to 10 July 2007). An attempt will be made to compare this activity with the analogical activity of the Sejm of earlier terms. An important question will be asked whether the activities of the Sejm in those two years became an inherent part of the programme of social reform included in the project proclaimed by the Law and Justice party "The 4th Republic".

By way of introduction, certain features characteristic of the legislative activity of the Polish parliament of all terms from 1989 should be presented. They include the following:

– A vast majority of draft laws were prepared by the members of parliament. The government, also authorised to submit draft laws, submitted a minority of them, which may have been caused by the frequent changes of government.

– The legislative work of the Sejm was usually more transparent than that of the government.

– There was little interference of the government with making laws in the Sejm.

– Both the government and the parliament never presented a broader plan of legislative works.
– The Polish parliament assumed, as its main responsibility, writing and changing the drafts of laws, which led to a situation when on the forum of the Sejm purely technical aspects of regulations consumed most of the time, whereas an ordinary discussion on the aims and effects of the acts of parliament seemed to be of secondary importance.
– Quite often, the Sejm committees and sub-committees, because of their fragmentation, had a negative influence on the legislative process.
– The role of the Senate in the legislative process seemed to be pointless and the Senate itself often appeared as a place of obtaining a "second chance" for pushing an act through the parliament.
– There was sporadic participation of experts in the legislative process.
– The low level of legal knowledge and culture of some members of parliament had a negative influence on the quality of draft laws proposed by the Sejm.
– After the initial period of creating new laws, which was a necessity related to the economic and political transformation shaping Polish reality after 1989, it was followed by a phase of amendments. On average, 60% of acts of parliament were amendments.
– The one-element (act of parliament) model of the sources of law system prevailed.
– Legislation in Poland was not properly supervised. There were no appropriate publications and institutions to deal with it.
– The system of regulations pertaining to legislative work in Poland was rather poor, which was evident in the lack of testing whether a given law would function properly. That resulted in some unusual situations when works were carried out on amendments to a law that had not even come into force. The attitude of the members of parliament themselves was not appropriate, either. They did not attach a lot of importance to the obligation to assess the economic, social and legal impact of an act of law, an obligation which was imposed by the Sejm By-Laws.

Law making 2005–2007

For many years, the Polish legislative process has been revealing numerous symptoms of being dysfunctional. However, this has acquired a certain

specific character during the 5th Term of the Sejm (2005–2007). An analysis of this issue should start with an analysis of the draft laws.

During the 5th Term, until 10 July 2007, 655 draft laws were submitted to the Sejm Speaker. The government submitted 344 drafts, which accounted for 52.5% of all drafts. The government drafts mainly constituted amendments (64.6%). Ratifications accounted for 9.6% of government drafts, and comprehensive drafts amounted to 24.2%. The rest were drafts concerning the budget and changes to the status of state schools and colleges. Comparing these figures with previous terms of the parliament, one can clearly see that the legislative revolution announced by PiS never took place.

Until July 2007 there were 261 drafts submitted by members of parliament, which accounts for 39.9% of all submitted draft laws. Together with drafts submitted by the Sejm committees, they accounted for 41.4%. (Apart from that, the President submitted 19 drafts, the Senate 13, and the citizens 8, which accounts for 2.9%, 1.8%, and 1.1% of all submitted drafts, respectively.) Out of those 261 drafts, 240 were amendments, which is 92%. Most of those amendments, as well as the comprehensive drafts submitted by members of parliament, were in fact implementations of government proposals. The main examples are draft laws: on amending the act on the National Radio and Television Broadcasting Council, the Vetting Act, the Election Law for local government elections, the act on family benefits, and others.

Until 4 September 2007, the number of drafts submitted by members of parliament increased to 347. The following drafts were submitted by individual parties: PiS deputies – 106 drafts, PO (Citizens' Platform) deputies – 66 drafts, SLD (Democratic Left Alliance) deputies – 60 drafts, Self-Defence deputies – 64 drafts, LPR (League of Polish Families) deputies – 61 drafts, and PSL (Polish Peasants' Party) deputies – 41 drafts. It is perplexing that the number of drafts submitted by the largest opposition party, PO, was so small. It may be explained by the Sejm Speaker's policy of delaying the drafts.

It should be noted that the Sejm of the 5th Term, during its last two sessions (just before the early elections) passed 48 acts, whose cost has been estimated by experts to be 20 billion PLN. Or that means that during one session the acts were passed which consumed approximately 10% of the state budget.

Within the period under study, 353 acts of parliament were passed, which is similar or higher than the number of acts passed in the corresponding periods during previous terms. Most of them, as much as 68.5%, were amendments of

the acts that were already in force, and 10% were ratifications of international agreements. Thus only every fifth act adopted by the Sejm in the period under study may be treated as a comprehensive act of law. The 311 acts, excluding the ratifications, concerned primarily:

– economy and agriculture, together with tax matters and financial regulations as well as ownership regulations (118 acts)
– central administration institutions (52 acts, including 22 applying to broadly understood administration of justice)
– social policy of the state (47 acts)
– state security and state security institutions (27 acts)
– education and culture (17 acts)
– current organisational activities, such as road building, environmental protection, etc. (14 acts)
– changes to codes (14 amendment acts)
– local government matters (6 acts)

Out of all those acts, 20% were the 63 acts passed in order to "implement the laws of the European Union". It was the government's obligation to have those acts passed.

Looking at this data, it can be concluded that there was a significant growth in the percentage of acts pertaining to the economy, agriculture and public finance (38.6% of all acts in the 5th Term and 22.7% in the 4th Term). Furthermore, there was a tendency towards increasing the percentage of laws regulating the shape of the central administration and state security institutions, which allows us to talk of statist legislation. Unfortunately, there was no indication of any systemic reform, as there were no comprehensive laws referring to the reform of public finance, the healthcare service, the retirement system or the economy.

A closer look at the legislative activity of the Sejm lets us make the following observations regarding the characteristics of the legislative process:

Superficial legislation

During the period under study, the superficial nature of a number of acts meant that they only touched upon the surface of a problem, without delving into its essence. As a result, there were acts that only apparently addressed the

problem while in reality they promoted certain political interests. As an example of such an act we can refer to the Act on 24-hour courts (more about it in Chapter V).

Lack of acts introducing comprehensive reforms

The flagship PiS slogan of the "solidarity-based state" seemed to announce a programme of carefully thought-through comprehensive reforms. Whereas the main objection against the government was exactly the lack of serious reforms important for the society, such as social policy, healthcare system or the retirement system.

Lack of interest in the codification and unification of the system of law

This objection may be raised both against the PiS government as well as against the parliaments and governments of the previous years. That, however, does not make the objection less serious.

Religious bias in making laws

This issue is very sensitive as it applies mainly to the questions of religious beliefs and ideology. These areas found their voice heard several times in the 5th Term. It is enough to give an example of the case of the protection of life from conception or the vetting disputes. A significant problem appeared when some acts were intentionally highlighted as being ideologically significant. Such a situation put pressure on the opposition, who became capable of accepting a bill, even in spite of certain constitutional objections. Nobody wanted to become, for instance, an enemy of settling the accounts with the past.

Legislative procedures

Between 2005 and 2007 the procedures of passing the laws were notoriously circumvented. Here are some examples:

The role of the Speaker

In general, the responsibilities of the Speaker include both ensuring the good quality of the draft laws and submitting the drafts to the parliamentary debate. In this latter task, he or she should take into account the preference for government drafts: he or she cannot, however, fail to submit to debate the drafts submitted by members of parliament. Whereas in the Polish parliament of the 5th Term, certain drafts never became official Sejm documents, for reasons which were probably purely political rather than formal. As a result,

certain drafts waited very long to be considered, which is explained by numerous expert analyses, yet some doubts remain as to the complete impartiality of the Speaker.

Obstructing of the budget bill from passing

In the case of works on the budget bill the problem was often the election date and the lack of time left after the elections to complete all the work. However, the whole atmosphere of the budget work in 2005 seemed exceptional. For the first time, the Speaker of the Sejm, in conjunction with the ruling party, tried to impede the work of the parliament to give the President a tool to threaten the parliament with dissolution and early elections.

Circumventing the Sejm by-laws

In the case of the Act on the National Council for Radio and Television Broadcasting, the Speaker reconvened the Sejm in order to repeat the vote that had just been completed and the different attendance brought in effect different voting results.

Putting undue pressure on deputies

The term of the parliament under study was full of ad personam attacks on the "enemies" of certain laws, which were at that particular moment forced through the parliament by the parliamentary majority. Frequently, those attacks were even directed at the Sejm experts when their opinions were not in line with the views of the supporters of a given law.

Short-cutting the legislative process

That tendency was clearly seen in the 5th Term and its culmination was the "Solidarity-based State" Committee, which considered the drafts using the fast-track procedure. Such an acceleration of the works resulted in lower-quality laws.

Assessment and the justification for draft laws

In generall, every draft needs to be accompanied by a justification, including, among others, a calculation of the costs of its implementation. Those justifications were notoriously neglected and full of errors.

Lack of clearly defined party objectives and a lack of social policy

Due to the fact that the social objectives were not precisely defined, the works on the acts of law were chaotic and fruitless. Moreover, the Polish parliamentary system was lacking clearly defined social objectives in that period.

Domination of the legislative process by sectoral interests

The responsibility for preparing government drafts lied with individual ministries, which led to the appearance of drafts that in fact promoted the interests of the ministry. The structures responsible for overseeing the preparation of draft laws in the government were passive and inconsistent. The procedures of preparing legislative proposals by the government lacked transparency. There was no quality control and their political character was sometimes only too evident.

Infringements of the rule of law

This had two dimensions in this term of the Sejm. The first dimension concerned the instrumental use of the law and its interpretation, which resulted in circumventing the law. The second dimension concerned failing to recognise the legal principles as binding, and limiting the law to rules, that is to the literal wording of legal provisions. That led to the improper treatment of the Constitution only as a set of rules which could be used on the basis of their linguistic and logical interpretation.

Lack of debate

During the 5th Term, the law making process lacked sufficient debate of legislative proposals as legislation was rushed through the parliament.

Conclusions

The activity of the Sejm of the 5th Term was focused too much on the past. It was mainly concerned with the issues of settling accounts with the past and there was no room for solving the problems of everyday life. Such urgent issues as constructing highways, repairing the healthcare and pension system, or improving the operation of courts were not solved.

Radosław Markowski

The Party System

What is the "party system" and what are its indicators?

The period of two years is too short for any fundamental changes of a party system to take place. That is why this analysis will cover the whole time of the Polish political transformation from 1989 to 2007, although with particular attention paid to the years 2005–2007, that is the rule of Law and Justice (PiS). In the case of Poland the term party system is rather a conventional term, as this system does not show the features that should be characteristic of model party systems. Instead, we should talk about a group of parties in Poland rather than about a party system.

The existence of political parties is an important prerequisite for the proper functioning of democracy. In a democracy, the parties which win the elections obtain the legitimacy to rule. There is a possibility of a one-party or coalition rule. The aim of political parties is to participate in the government. Party systems, by their very nature, must select the winners on the basis of the election law. An institutionalised party system is characterised by the following:

– The parties should be autonomous, also with respect to the institutions which helped create them, such as the church or the trade unions.

– The parties should be rooted in the society, which means that the voters of a certain party represent a certain social class, stratum or group.

– The parties should be independent from their charismatic leaders and should exist on the political scene for a long time. The issues of leadership in the parties should be regulated by rational-bureaucratic criteria.

– The parties and their members recognise elections as the only way to decide who is going to take power in the country.
– The key relations among the parties are stable and their programmes are predictable. Multi-party coalitions, therefore, become permanent and their repeatability provides predictability to the party system.

According to Peter Mair, a scholar working on party systems, an institutionalised party system is a system with permanent, predictable and routine patterns of competition and political alliances. Many other experts also point to stability as an important factor which makes it possible to better explain and predict political phenomena. However, there still remains the problem of establishing the period of unchangeability of a certain parameter, which is necessary to consider something stable. It has been agreed that we can take into account three measurements of one parameter, and that allows us to talk about relative stability. In the case of politics, this parameter would be an electoral and term cycle. Since the elections of 2005, which were the fifth fully democratic parliamentary elections in turn and the fourth democratic presidential elections, we can talk about a certain permanence of political phenomena in Poland.

An assessment of a party system must focus on the quantitative approach. The main features and quantitative indicators of the institutionalisation of the party system are the following:

– the so-called "effective number of parties"
– fractionalisation of the party system
– measure of the proportionality of the party system
– the percentage of the so-called "wasted votes" in the elections
– the sum of all votes and mandates won in a given election by the two largest parties
– the level of the so-called "electoral changeability", that is the degree of instability of electoral preferences of the voters, measured both at the aggregate level and individually.

These indicators make it possible to assess the stability of a system, its representativeness, the level of consensus capabilities of political elites, and also the potential to form coalition governments.

The Polish party system

Using the above criteria, it should be stated that as of 2007 there is no party system in Poland. A number of facts can point to that:

– Constant changes of the election law in the years 1989–2005.

– In 2007 there was only one party that existed back in 1991 – the Polish Peasants Party (PSL).

– In the years 1991–2007 no government of the same partisan configuration ruled twice.

– Leaders of most of the parties lent their image to promote a number of different parties and electoral coalitions.

– In Poland there is a great electoral changeability, which is a symptom of the lack of social roots of the parties. At the aggregate level, between the years 2001 and 2005 the change of political party support amounted to 38%, whereas in Western Europe the same indicator reached approximately 9%. Furthermore, in 2005 as many as 63% of Poles cast their votes for a different party than four years before, and as many as 28% changed their preferences en bloc, that is from left-wing to right-wing parties or vice versa.

– A peculiar trait of Poland was also a very low turnout in previous elections. While in Western Europe the turnout was about 75%, in Poland it oscillated around 40%–50%.

As a result of that, the winner of the parliamentary elections in 2005, that is the Law and Justice party, won the support of only 10.54% of eligible voters.

The above facts indicate that in Poland we cannot talk about a party system but rather about a group of parties fighting for voters. The indicators showing the electoral instability may indirectly reflect the level of disappointment of Poles with politics and may explain the low election turnout. The turnout in Poland is so low that it is casting one's vote should be treated as deviation and not, as in other countries, abstaining from voting. The non-voting group has become so large that it is difficult to point out any specific features of that group and it is an arduous task to explain the turnout difference between Poland and Western European democracies (the difference of 30–40%) or Eastern European democracies (here the difference is about 20%).

The responsibility for this situation should fall on the political elites which in Poland are subject to constant movement, which confuses many voters.

Political parties are forming, merging, changing their names and politicians (especially before elections), and changing their political affiliations. In addition, Polish political parties have always been under the greater influence of non-political institutions than it was the case in other countries of the region. A good example is the influence of the Catholic Church on Polish political life, which may partly explain the lack of a systemic character of political parties in Poland. Other possible reasons are suggested by Juan Linz and Alfred Stepan. In their opinion, young democracies, which previously had a highly mobilised "alternative society", i.e. a society with the traditions of social resistance to the political sphere, may have problems with transforming that opposition's excessive mobilisation into an institutionalised civil society and a legitimate political community. Such suppositions may be confirmed by the fact that stable institutionalised party systems exist in Hungary and in the Czech Republic where the mobilisation of the society against the communist regime was significantly lower.

Another specific feature of the Polish political sphere is the reference of the voters to various issues that they consider important when making their choice as to which party to support. The majority of Poles do not vote considering the issues such as the economy, unemployment, the privatisation policy or social security. The factors determining whether a voters casts their vote for the left-wing or for the right-wing party usually remains in the sphere of culture and society: the issue of their attitudes to abortion, to the role of the church and to the communist legacy.

The results of the 2005 elections

After the 2005 elections, the spectacular victory of PiS was often mentioned. One should, however, remember that only one in ten Poles eligible to vote supported PiS, which is a very poor result. Those elections showed that the parties do not have any stable electorate, which was indicated by the level of electoral changeability, although it is interesting that the six parties that made it to the Sejm were the same parties that managed to do that in the elections of 2001. An analysis of the 2005 elections also revealed that there was a difference in the profiles of the voters of the two major parties. Namely, PiS attracted more people with a low level of education, older and living in rural areas than the Citizens' Platform (PO). Furthermore the research done on the 2005 election results showed that the PiS voters were religious, poor and held less prestigious positions on the labour market. PiS had the greatest support in south-eastern Poland, which has always been home to the electorate of the Polish right. The PO voters were just the opposite – they were well off,

moderately religious and came mainly from larger cities. Its main centres of support were located in north-western Poland, and the party won with a great majority in all regions populated by national minorities. In addition, the areas where PO won greater support are the regions with a much higher GDP indicator than the regions where PiS won. Those visible regional differences, do not, however, authorise a theory of the two Polands: an eastern one supporting PiS and the western one supporting PO. There is rather one Poland – one reluctant to participate in elections.

A comparison of the results of the elections of 2001 and 2005 indicates that the parties have electorates that are more internally coherent, and the main axis of competition between the parties is more strongly defined by economic issues. This contributes to a greater clarity of the electoral system. It should, however, be remembered that in 2005 PiS was able to retain only 64% of its voters from 2001, and PO retained only 44%.

The years 2005–2007 and political parties

As a result of the early elections in 2007 no new political force appeared which would be able to exceed the 5% threshold, which testifies to the organisational stability of the political parties. The election results reveal, however, that the electorate was not stable. As studies show, in the years 2005–2007, the electorate of PiS became much older and less educated than in 2005. Among Poles in the age group of 18–24 years, only 16% wanted to vote for PiS in 2007, whereas in 2005 this figure was 27%. In 2007 the group of citizens over 60 years of age who declared voting for PiS was 36%, whereas in 2005 it was 29%. In the case of PO there was a reverse process. Among the youngest voters, their support for PO rose from 33% to 44%, and among the oldest it fell from 17% to 13%. Furthermore, people with an elementary education reduced their support for PO from 13% to 10%, and people with a higher education increased their support from 37% to 45%.

The data on the declared transfer of voters' allegiances is also worth mentioning. In the case of the two largest parties (PiS and PO), only 45% of those who voted for PiS in 2005 intended to do so in 2007, whereas PO managed to retain 57% of its voters from 2005. As it can be seen, PiS lost many more supporters than PO and it lost them mainly to PO.

Over those two years the parties themselves changed from the point of view of their programme. PiS moved from a conservative position to a populist--nationalist stance. PO partly lost its liberal character diluting into a range of

programme proposals, from conservative, Christian-democratic to social--democratic. The greatest, however, were the changes undergone by PSL. Its centrist moderation, opening towards the European Union and proposed substantive programme discourse won the new urban elector for this party.

What should be done?

All the above-mentioned facts indicate the instability of the Polish "party system". Can anything be done about it? The election law certainly should not be changed from the current proportionate one to majority elections with one-mandate electoral districts, because that would only be conducive to political corruption. The main issue worth focusing on is the problem of recruiting candidates to politics and allowing new people to enter politics in Poland. There is also a need to change the way politics is discussed and, especially for academics and experts, to shift from axiological-legal language to economic-empirical discourse, since the more the neutral knowledge of the political economy influences political decisions, the better the quality of politics is.

Conclusions

There are a number of factors which prevent us from talking about a party system in Poland. As it can be seen from the period under study, the main reason for that is the great instability of the parties themselves and of the voters' preferences. The factors influencing this are: imperfect election laws and politicians who amend these laws to promote their own particularistic interests, non-charismatic party leaders and disloyal politicians who often change their party affiliations. As a result, the election turnout is low. Poles do not trust unstable political parties that are indecisive in their programmes and they prefer not to participate in elections. A bi-polar order has appeared, with the two largest competing parties (PO and PiS). This could be treated as a positive sign of stabilisation, but one may doubt, however, if such an alternative will improve the accountability of the political system.

Krzysztof Burnetko

Public Administration

The so-called 4th Republic (a new era after the electoral victory of Law and Justice) strongly negated the concept of civil service, that is professional and non-party public administration. The reason for that was the negative attitude of the government to the institutions of the 3rd Republic (the order created after the transformation from the communism to democracy after 1989). Furthermore, under the PiS-led government official appointments were treated as a form of a bonus for political loyalty and as jobs providing income to friends and family members.

Opening balance

The public administration of European states is based on the civil service model, defined by the six Nolan Principles, which refer to selflessness, integrity, objectivity, accountability, honesty and openness.

All political forces in Poland after 1989 declared that they would build public administration on the basis of the civil service model. However, the promises to build a corps of professional, non-party civil servants were never fulfilled. The first law on the civil service appeared only in 1996, however, already in 1998 a new one was passed, which did not change the fact that even that new law was notoriously violated. The governments of both sides of the political scene appointed "their own people" to the posts. Some governments were more ashamed to do that, as for instance the AWS (Solidarity Election Action) government of Jerzy Buzek, while others, such as Leszek Miller's left-wing government, openly admitted it. The Civil Service Act was breached and sometimes there were attempts to circumvent it, for instance,

by changing the status of some public offices so that the civil service requirements did not apply to them. The bodies, such as the Civil Service Council, whose role was to protect the position of the civil service, were regularly ignored. One of the brighter moments was the government of Marek Belka, which at least introduced an open system of recruitment to public administration. After that the programme for the 4th Republic, announced by Law and Justice in 2005, brought promises of radical changes in public administration

Civil Service as the "układ" – the network of connections

During the elections campaign in 2005, Law and Justice promised to crash the pathologies of the 3rd Republic, carry out a "moral revolution" and build a "strong state", called the 4th Republic. PiS treated the public administration as an element of the mythical network blooming in the interest of influential groups and elites of the 3rd Republic. That was why, immediately after taking power, it promised a radical reform of the administration. In the stabilisation pact concluded between PiS and its coalition partners, a provision appeared on regulating the civil service and the competition procedure, and, more specifically, about introducing a possibility of a "free flow of qualified officials between the human resources of public administration officials, officials of the Supreme Chamber of Control (NIK), local government officials and members of the civil service corps and other similar resources and about a change of the principles of holding competitions for positions in public administration and other state-owned corporate persons". However, it soon turned out that those in power had a completely different attitude to the apolitical nature of public administration. Numerous statements of key PiS politicians testify to that, such as the one made by Ludwik Dorn, who, as the Minister of Internal Affairs and Administration, in November 2005, stated that civil service "should be a group of competent but also politically loyal officials", or that of Marek Kuchciński, who, as a deputy chairman of the PiS Parliamentary Group, stated that "officials are expected to carry out the policy of the government, because the government has the assent of the Parliament and the President to implement the policy of the state". Civil service members at the time were often offended. PiS politicians accused them, first of all, of being appointed by the SLD, but they were not spared some more drastic offences, either (e.g. Ludwik Dorn said that they were mostly drunks).

Changes in legal regulations applying to public administration

PiS started, therefore, to introduce legal changes according to its vision of how public service should operate. First, the Act on public service was amended, which opened a possibility to transfer the staff of the Supreme Board of Supervision (NIK) and the local government officials to work in the government administration. It is significant that President Lech Kaczyński used to be the Chairman of the Supreme Board of Supervision and later the Mayor of Warsaw. Then, on 24 August 2006, the Act on Civil Service and the Act on the National Executive Personnel Pool were pushed through the Sejm. Those acts abolished the competition procedure in the recruitment to managerial posts in government administration. However, the number of posts covered by the Act was greater than it seemed, because it amounted to over 2000 posts. Candidates to those posts were to be recruited from the National Personnel Pool (PZK), from which ministers or directors general of ministries and heads of offices were expected to draw their officials. They could also be dismissed without any formalities. Anybody with the appropriate length of experience and having passed the appropriate examinations could get into the Pool but there was nothing in the law about political neutrality of the PZK members. In addition, the acts abolished the post of the Head of the Civil Service Office. The responsibilities of the Office were taken over by the Prime Minister's Chancellery, which would thus assume supervision over the 120,000 people from the civil service corps. The newly introduced laws were again amended in May 2007. As a result of those amendments the group of people eligible to be in the National Personnel Pool increased and the list of institutions whose heads did not have to be appointed by way of a competition procedure were extended. All that significantly narrowed the public service and practically limited the application of its rules only to the medium-level posts.

The practice of recruitment and filling the posts

After PiS took power in 2005 numerous personnel changes took place. Their number indicated that we could talk about purges. The leader in personnel changes was the Ministry of Internal Affairs and Administration and the Ministry of Labour. The imperfection of the new law and doubts as to its conformity with the Constitution left room for numerous manipulations. In that way, after some quick appointments, several activists connected with Self-Defence became eligible for PZK.

However, the best evidence of the political approach of the government to filling official posts could be the speed with which the appointees of Self-Defence and LPR were losing their posts at the moment of the political crisis. They were obviously replaced by people connected with PiS.

Possible consequences of the functioning of public administration and the perception of political elites

One result of such an approach of the government to public administration was the lower quality of work of that administration. The degree of the officials' servility also increased as the officials hoped to obtain further appointments from the authorities to whom they had been loyal. Eventually, the prestige of the public administration itself fell as it started to appear as a place of party scrambles. However, the worst effect of the political approach to administration by Law and Justice may be the lack of trust of the new ruling team (PO and PSL) in a large group of public officials. Due to the elections in October 2007, in the near future there will probably be new purges (promises of "cleaning up" after PiS), and thus this very negative cyclical character of a re-shuffle among the public administration personnel will not only continue but it will also become a binding custom.

Adam Bodnar
and Michał Ziółkowski

The Justice System

Introduction

Gaining control over the justice system was one of the priorities of the Law and Justice party (PiS), which assumed power in 2005. The position of the Minister of Justice was filled by one of the closest associates of Lech and Jarosław Kaczyński, Zbigniew Ziobro, the man who, at the very beginning of his term in office, presented 23 draft laws expected to revolutionise the justice system. Did a revolution really take place? What follows is an analysis of the institutional issues related to the justice system in the years 2005–2007.

The prosecution

An analysis of the functioning of the prosecution service may deal either with the changes in the legislation applying to the prosecution service or with its day-to-day operations. The legislative solutions adopted by the Sejm, as well as the fact of using the prosecution service in political actions, deprived the service of its independence.

The Act dated 29 March 2007 amending the Act on the Public Prosecution Service, prepared by Jarosław Kaczyński's government, brought about some radical changes in the organisation of the prosecution service. The law extended the scope of interference of superior prosecutors into the decisions made by their subordinate entities, while at the same time expanding the number of the superior prosecutors themselves. Such regulations, not entirely clear, led to a situation where a public prosecutor in charge of the

proceedings was overly bound by the views of his superiors. The Act also significantly increased the influence of the Public Prosecutor General, that is the Minister of Justice, over the functioning of the prosecution service by introducing a possibility to delegate prosecutors to work in a different unit.

In order to ensure a non-political prosecution service, a draft law was submitted by the parliamentary opposition, which aimed at making the prosecution independent from the executive branch. The draft law provided for the separation of the function of the Minister of Justice from the position of the Prosecutor General, and for the latter to be appointed for a six-year term. It also proposed introducing clear promotion requirements in the prosecution service and making the disciplinary procedures more efficient. Because of the decision of the ruling coalition, the draft was not even debated by the Sejm.

Apart from the legislative changes, there were also changes in the practical operation of the prosecution service. A peculiar novelty of the years 2005–2007 was the frequent appearances of the Minister of Justice in the media, which became almost a regular place where the Minister issued his orders and announced his sometimes premature verdicts. The reputation of the prosecution service in the legal world has deteriorated. There were many protests against such practices, including the Association of the Prosecutors of the Polish Republic, which expressed concern about the level of the prosecution service's political dependency.

Another negative occurrence was the involvement of the Minister of Justice in the elections campaign in autumn 2007. Since the Minister of Justice also holds the post of the Prosecutor General, such political involvement put the whole law enforcement sector in an unfavourable light. The reports on the alleged tapping of phones of the journalists critical of the government, instituted on the Prosecutor General's orders, should not be ignored. This issue should be explained as soon as possible because it creates an atmosphere of anxiety which may, indirectly, paralyse journalist activity.

The activities of the Ministry of Justice in the years 2005–2007 aimed at increasing the supervision of the executive branch of the government over the operations of the prosecution service. That tendency caused a negative reaction of the prosecutors themselves, which was not enough, however, to prevent the political interference of the Minister with the matters handled by the prosecution service.

The judiciary

Changes in the Act on the Constitution of the Common Courts of Law

In October 2006, the government presented a proposal for changes determining the authority of court presidents and establishing the rules for promoting judges. The proposal raised a lot of controversy. In spite of the appeals of the legal community and an address of the First President of the Supreme Court, on 29 June 2007 the Sejm passed the law introducing a possibility to delegate a judge to another court by a decision of the Minister of Justice as well as a possibility to suspend a judge in his or her official duties. Under the law, such a suspension could take place after the judge's immunity had been lifted, which could be done with immediate effect. The provisions of this act raised serious doubts. The main ones concerned the possibility of transferring a judge, by force of a minister's decision, which could become a tool for interfering with the proceedings already in progress. Other concerns were raised by the new provisions on judicial immunity, which apparently fail to guarantee the accused judges their basic right to defence.

Appointment of judges

The Constitution of Poland, in Article 179, vests in the President the power to appoint judges on the motion of the National Council of the Judiciary. However, this article does not mention anything about a possibility to refuse such an appointment. That is why it has been an adopted constitutional practice that has regulated that matter. That practice reflects the view that a refusal to make such an appointment would distort the relations between the executive authority and the judiciary. Meanwhile, for the first time since the adoption of the new Constitution, the President refused to appoint as many as nine candidates as judges. The President did not given any reasons for his decision.

The Status of the National Council of the Judiciary

The National Council of the Judiciary is an independent state body safeguarding the independence of the judiciary. For obvious reasons, in order to perform this role it must be independent itself. Therefore, any proposed changes to its status must be closely monitored.

On the President's initiative, a draft law was submitted amending the Act on the National Council of the Judiciary. That law was passed by the Sejm on 16 March 2007. The most controversial provision of the new act prohibited the simultaneous holding of a post of the president or deputy president of a court and sitting on the National Council of the Judiciary. This provision forced nine

out of twenty-three members of the Council to choose between sitting on the Council and holding the position of the court president. This provision was pronounced unconstitutional by the Constitutional Tribunal, and the conformity with the Constitution of some other provisions was still awaiting the verdict of the Tribunal at the end of 2007.

Assistant judges – an unsolved problem

The position of assistant judges in the Polish justice system is rather problematic. The fact that assistant judges report to consulting (advisor) judges does not provide grounds to claim that they are independent nor does the procedure according to which they are appointed by the Minister of Justice. Constitutional doubts with regards to the way in which the assistant judgeship operates have been raised by the Constitutional Tribunal but so far as of the end of 2007 no promising solutions to that problem have been offered.

Excessive length of court proceedings

One of the maladies of the Polish justice system during the period under study was the lengthiness of court proceedings, both in criminal and in civil courts. This issue was the subject of numerous complaints filed by Polish citizens with the European Court of Human Rights.

The excessive length of court proceedings in Poland was noticed as a problem by the Council of Europe Commissioner [for Human Rights] who pointed out two issues in particular. The first was the insufficient number of auxiliary staff in the justice system. The other concern was the ineffectiveness of an appellate measure, namely the Act on the complaint against the violation of a party's right to have their case examined in court proceedings without undue delay. These two issues were problems during the period under study and still require a proper solution.

In Poland, the average length of civil proceedings, including economic matters, from lodging a complaint to the enforcement of the judgement amounts to 980 days, whereas in other countries of Central and Eastern Europe it is about 409 days. That is one of the reasons why Poland ranks only 75th on the World Bank's "Ease of doing Business" ranking. The excessive length of court proceedings is also a serious problem in family cases, mainly those concerning the enforcement of parental rights. Looking for a remedy against the lengthiness of court proceedings should not be limited only to the process of extreme formalisation of procedures, as this may lead to situations where the real substance of the case is lost. Making procedures more efficient should be reinforced with staff and the technical restructuring of Polish courts.

24-hour courts

The response of the PiS to that problem was an introduction of the so-called 24-hour courts. The courts were introduced by an Act dated 12 March 2007. Under the Act, the procedure applied by these courts is the procedure of expedited proceedings, which is expected to facilitate the fast trial of offenders who commit "acts of hooliganism", who have been caught red-handed or immediately after the commission of an offence. The idea itself seems to be right since it has been operating successfully in some Western European states such as France or Germany. However, certain provisions of the Act raise doubts. For instance, the very notion of an "act of hooliganism" is introduced into the Criminal Code in a somewhat imprecise way, and the procedure of a fast trial, as proposed in the Act, may be interpreted as limiting one's right to defence. Another issue raising concern is the fact that the Act makes it possible in a 24-hour court to impose a penalty as high as 2 years of imprisonment.

As far as remedies for the excessive length of court proceedings are concerned, some positive measures were taken during the period under study. Training provided to judges and prosecutors should also be praised as well as increasing the budgets of courts and the funding for computerisation of the courts. All that is, however, still not enough and other solutions, such as for example the 24-hour courts or a proposal to impose additional penalties on defence lawyers for intentionally delaying the proceedings, seem to be only some media tricks which have not brought about any substantial changes.

Reorganisation of the justice system

A lot was done between 2005 and 2007 with regard to the computerisation of the justice system. Among others, electronic records of the trials were introduced as well as an option of examining a witness by way of a videoconference. Another solution which made this sphere much more efficient was an obligation imposed on the courts to maintain their own websites containing detailed information about their work.

The Sejm of the 5th Term did not manage to pass a bill submitted by the government regulating the status of a court expert. It is, however, easy to see some evident flaws in the bill. According to the draft, there would be one national list of court experts maintained by the Minister of Justice. Other provisions refer to the requirements of court experts' experience and confirmation of their qualifications. Yet, the first provision itself, which in fact proposed to give the executive branch a possibility to indirectly interfere with court proceedings, disqualified the bill.

Under the Act of 29 March 2007, the scope of cases adjudicated by regional courts as the courts of first instance was extended. The aim of that idea was to make the operation of the courts more efficient, but it actually paralysed them even more and increased the already excessive duration of the work of Polish courts.

As it can be seen, the government policy towards the justice system left a lot to be desired. There were some positive solutions, but there were also some legislative errors. The political standards were additionally lowered by statements of some executive branch representatives repeatedly attacking judges and even the Constitutional Tribunal.

Prison system

The problem of overpopulated prisons

On 31 December 2006, the registered overpopulation of prisons in Poland amounted to 119.4%. Such a level of overpopulation had a clear negative influence on the implementation of education and rehabilitation programmes. Another problem of Polish prisons was the low standard of healthcare or conditions for disabled offenders. The minimum area per one prisoner required in Poland is three square metres, and it is one of the lowest standards in Europe. It should be kept in mind, however, that quite often the real area per prisoner is even lower than that. For those reasons, in 2006 the Ministry of Justice started to implement a plan aiming to improve the situation in Polish prisons. The plan, however, concerned increasing the number of places with the area of three square metres.

Serving a sentence of deprivation of liberty and restriction of liberty – new solutions

One of the ways expected to reduce the overpopulation in penal institutions was the introduction of new systems for serving a penalty: in a weekday prison scheme (intermittent custody) and in the electronic tagging scheme.

Intermittent custody

The draft law adopted by the Council of Ministers assumed a possibility of serving a sentence in the intermittent custody system, involving periods of imprisonment alternating with periods at liberty. Offenders covered by the programme would be those sentenced to not more than one year of imprisonment and who have already served half of their term. The scheme still requires some work, but once in its final shape, it may provide a real, at least partial, solution to the problem of prison overpopulation.

Electronic tagging

Electronic tagging, as a substitute measure for serving a sentence in prison, consisting in controlling the actions of an offender outside prison with the use of electronic equipment, was adopted by the Sejm on 7 September 2007. This form of serving the sentence has worked well in many countries and good results should also be expected in Poland.

Fees for time spent in prison

A proposal of the Ministry of Justice, to charge the inmates for the cost of bed and board during their time in prison, seemed to be contrary to the Constitution as it would introduce a hidden, additional penalty in the form of a fine.

Pre-trial detention – a still unsolved problem

Pre-trial detention is the main human rights issue we have to deal with in Poland. Numerous appeals of the Council of Europe and attempts to intervene on the part of the European Court for Human Rights do not change the fact, that in the years 2005-2007 pre-trial detention was a notoriously abused preventive measure in Poland. And a practice that is absolutely inadmissible, is the so-called "extractive arrest", which is the use of pre-trial detention, by prosecutors, for the purpose of obtaining a testimony. This whole issue, compromising Poland in the international arena, calls for an immediate solution.

System of legal assistance

Draft law on free legal assistance

The draft law on free legal assistance granted by the state to natural persons provides, among other things, that non-governmental organisations whose statutory duties consist in providing legal assistance should be selected by way of competition. Unfortunately, the law was not passed by the 5th Term Parliament.

Functioning of the court appointed legal assistance

The main stumbling block as far as the "court appointed" legal representation is concerned is the lack of legal regulations applying to situations when a lawyer resigns from representing his client.

Lawyers' self-governing bodies

One of the objectives of the Ministry of Justice in the years 2005–2007 was to create a transparent system of supervision over the operations of lawyers' self-governing bodies and facilitate access to the legal profession. The aim of the changes was to increase the accessibility of legal services by reducing their prices. The main tool to achieve that was the gradual restriction of the powers of professional self-governing bodies by extending the Minister of Justice's supervision over disciplinary courts. Therefore, a question arises whether the proposed tool was not indeed the aim in itself.

Independence of the self-governing bodies of advocates and legal advisers

Professional self-governing bodies are the implementation of the civil society principles. They are particularly important in the case of public trust professions, such as the legal profession. That is why the so-called "fight against lawyers' corporations" waged by the Ministry of Justice raised a lot of concern.

Disciplinary court proceedings

In Poland, the discussion on the diligence of disciplinary court proceedings has continued for years. However, the attempt at solving the problem proposed by the Ministry of Justice headed by Zbigniew Ziobro was unacceptable. The Ministry's proposals include, among others, handing over the disciplinary court proceedings to common courts and introducing the post of a disciplinary commissioner, reporting to the Minister, whose role would be to supervise disciplinary proceedings. Those proposals were very negatively received by the legal circles in Poland.

The changes could go in the right direction, as is shown by the Act passed on 29 March 2007, increasing the openness of disciplinary proceedings. These changes will influence the reliability of the proceedings.

Maximum fees for the services of advocates and legal advisors

The Ministry of Justice also proposed to introduce official maximum fees for legal services, which, however, caused very firm opposition of the legal circles. This is because an introduction of such a solution would in fact constitute a violation of the free market rules. The proposal was, to a great extent, perceived as an element of escalating the conflict between the Ministry and the legal profession self-governing bodies.

Opening the legal profession

The members of the legal community also agreed that there was a need to reform the access to the profession. However, the proposal of the Ministry of Justice suggesting breaking the monopoly of advocates and legal advisors for providing paid legal assistance by creating a three-tier system of lawyer licences seemed inappropriate. Indeed, the proposal would lead to the creation of a new legal profession, beyond anybody's control, which would not solve the problem but would simply cause even greater chaos.

Bailiffs

The reason for changes, in the case of the bailiffs' self-governing body, was also the limited access to the profession. As a result, the reorganisation of the bailiffs' allocated areas was introduced and bailiffs were allowed to operate all over the country. These solutions can significantly restrict the right to defence and the right to court.

Reform of the notarial service

The reform attempts of the Ministry of Justice also included the profession of a notary. However, the reforms were not supported by the Sejm. The whole proposal providing for the creation of the National Congress of Notaries and increasing the Minister's control over the notaries' self-governing body was rejected.

Conclusions

The reforms to the justice system, announced by PiS in a rather high-flown manner, boiled down mainly to disparaging the legal circles. The actions of the government led to a disquieting situation in which the division of power seemed to be threatened. Such conclusions emerge from politicising the prosecution service and from introducing solutions giving the executive authority real control over the appointments in common courts. The attempts to abolish the independence of the professional self-governing bodies was also a negative sign. Admittedly, certain actions, such as increasing the budget of the judiciary or implementing the programme of computerisation of the courts, deserve to be positively assessed; however, the overall balance is very negative. The rest of the picture is filled with numerous practices aimed at restricting the independence of judges and continuous verbal attacks on the legal profession. All that led to a situation in which a radical reform of the justice system is necessary. The reform, which the PO (Citizens' Platform)-PSL (Polish Peasants' Party) government will have to

stand up to, should, to a great extent, consist of solutions rectifying the errors of the PiS government. Another important task seems to be the necessity to restore the public trust in the prosecution service and the whole system of the administration of justice.

Adam Bodnar and Dawid Sześciło

Combating Corruption: Institutions and Their Activities

Introduction

Corruption is one of the most serious problems in Poland. In 2006, as many as 88% of Poles believed it to be the greatest problem for the functioning of the state. In the Corruption Perception Index prepared by Transparency International, in 2006 Poland ranked sixty-first, as the most corrupted EU member state. Corruption is a real threat to the Polish economy. According to a World Bank study, almost 40% of Polish businessmen recognised corruption as the main problem in running their businesses. Police statistics testify to the size of the phenomenon of corruption. From 1999 to 2006 the number of revealed corruption offences increased almost tenfold. The final example of the omnipresence of corruption was a scandal, which was given a lot of publicity by the largest Polish daily "*Gazeta Wyborcza"*, called the "Rywin Scandal". When PiS gained power they promised a ruthless fight with corruption and seemed to enjoy the support of most of the society in this respect. What was the result of this fight? Was it used for purely political purposes? This chapter will attempt to answer these questions.

Central Anticorruption Bureau

Discussion over the creation of the CBA

The Central Anticorruption Bureau (CBA) caused a lot of discussions even before it was established. Doubts were raised about the apolitical character of the newly created service. Some also wondered whether it was necessary to form another special service. Furthermore, it was demanded that it should be

the Sejm and not the Prime Minister who would appoint the head of the CBA. That, however, would be contrary to the Constitution as according to its provisions it is the Council of Ministers that manages the government administration and the Act on the CBA states that it is a service belonging to the government administration. Eventually, after some heated discussions, on 9 June 2006 the Parliament passed the Act on the Central Anticorruption Bureau, and on 3 August 2006 the Prime Minister Jarosław Kaczyński appointed Mariusz Kamiński as the Head of the CBA.

Duplication of responsibilities

The Central Anticorruption Bureau, the Internal Security Agency, the General Inspector of Financial Information, and the General Inspector of Fiscal Control are all state institutions whose remit includes combating corruption. In this area, a key role is played by police supported by the activities of the prosecution service. In the years preceding the period under discussion, the powers of all these bodies within the scope of combating corruption were strengthened. The creation of the CBA meant, in a way, denying the effectiveness of the work of those agencies. The scope of the CBA's activity, not defined in the Act in a very precise way, heralded possible conflicts and jurisdiction disputes with the existing agencies responsible for fighting against corruption.

The powers of the CBA

The Act identifies fighting corruption as the main responsibility of the CBA. But there are also a number of other activities, such as, for instance, checking the truthfulness of property declarations, within the remit of the Bureau. In order to carry out those tasks, the CBA officers have been equipped with numerous powers, e.g. the right to issue orders to a third party requiring certain behaviour, the right to check the identity of people, the right to detain people, the right to search people and premises, or the right to carry out body search. Thus, in the case of the CBA, we are dealing with another service equipped with powers to interfere deeply with the sphere of personal freedoms and rights of the citizens. Moreover, the scope of CBA powers raises some objections, as they go beyond the earlier announcements of the supporters of the creation of that institution, beyond activities aiming at fighting corruption (the CBA is also expected to combat activities which harm the economic interests of the state).

Controversial activities of the Central Anticorruption Bureau

On 12 February 2007, the head of the cardio-surgery ward in the Hospital of the Ministry of Internal Affairs and Administration (one of the best hospitals in

Poland), Doctor Mirosław G., was arrested. Sixteen out of twenty charges submitted against him by the prosecutor's office concerned accepting bribes. Other charges were equally serious, including a charge of murdering a patient in December 2006. CBA officers arrested the doctor in his office, before his patients, and took him, handcuffed, to jail. It is therefore difficult not to have an impression that it was just a media spectacle, as the arrest could have happened in different circumstances. In connection with that case, there was also a violation of the principle of the presumption of innocence by the Minister of Justice, Zbigniew Ziobro. During a press conference organised after the spectacular arrest, the Minister said, "Nobody will ever again be deprived of life by this man".

Even greater controversies surrounded the failed CBA investigation against the former Deputy PM and Minister of Agriculture Andrzej Lepper, which triggered the decomposition of the ruling coalition and resulted in early elections.

The CBA, as an agency fighting corruption, has at its disposal some well developed methods of encroaching upon the sphere of the rights of an individual. With such powers it must be subject to very precise regulations. Unfortunately, this is not the case. That situation raises a suspicion that it may become an agency for fighting political opponents of the ruling government. Numerous actions undertaken by the CBA influenced its already tainted reputation. As of 2007, the CBA seems to be a peculiar "political police".

Fighting corruption in the process of legislation

Act on lobbying – a dead law?

The Rywin scandal showed that it was necessary to regulate the issue of the influence of lobbyists on the adopted norm setting acts. Therefore, on 7 July 2005, the Act was passed on lobbying activities in the legislative process. The Act, however, is very imperfect, because according to its provisions, in September 2007 only twelve people were involved in lobbying in the Sejm. This is obviously false and it should be blamed on the insufficiently specified notion of "lobbying activity" in the Act of 2005. Therefore, the law concerning that sphere should be changed.

The transparency of the legislative process

The transparency of the legislative process will not eliminate illegal pressures but will make them much more difficult. Such transparency is to be ensured by

the publication, once every six months, by the Council of Ministers of the programme of legislative works, and by the institution of public hearing. Unfortunately, in the 5th Term, there were public hearings concerning only six draft laws. That is definitely too little. Some thought should also be given to increasing the transparency of the meetings of the parliamentary sub-committees, for instance by publishing the minutes from such meetings. It is during such sub-committee meetings that the risk of illegal pressure is particularly large. Finally, the very speed with which the laws are passed in Poland also has a negative offect on the openness of those processes. A great number of drafts and laws make it impossible to devote an appropriate amount of time to control issues.

Anticorruption activities within the government administration

Implementation of Anticorruption Strategy 2002–2009

The government of Jarosław Kaczyński decided to implement the second phase of the government strategy, referring to fighting corruption in the state structures. This phase covers the years 2005–2009, and therefore it is difficult to make a comprehensive assessment of something that is still in progress, but the assumptions of the strategy could be discussed. The characteristic features of the strategy include, first of all, an emphasis on legislative changes, while on the other hand, there is little space for organisational or educational tasks. Such issues as for example raising the level of ethical standards of administration officials seem to be of key importance, because the law on combating corruption in public administration is quite precise. What deserves a positive assessment is the appointment in some public offices of the so-called ethics advisors, whose role is to advise the staff on ethical matters and give an opinion on draft legal acts, rules and standards concerning ethics and ethical behaviour. However, this should only be the beginning of changes leading to higher moral qualifications of public officials.

The draft law on the so-called 'assets lustration'

The Sejm of the 5th Term worked on a draft law on restrictions connected with performing a public function. The Act was supposed to cover the issue of assets lustration of people performing public functions. The draft raised certain objections as it included provisions on publicising assets declarations of public figures, which should be supplemented with a similar declaration of his or her spouse. That would be a violation of the right to privacy, if not of the public figure, then certainly of his or her spouse. Another unacceptable

element proposed in the draft was a penal sanction against persons who fail to submit a declaration about their own or their spouse's economic activity. Deprivation of liberty for the period from one month to three years seems to be a disproportionate punishment.

The assets declarations submitted by the members of the European Parliament may be used as an example for constructing such a law. These declarations include data pertaining to extra-parliamentary income-generating activities and financial support received by MEPs from a third party within the framework of their political activity. The declarations are open and focus solely on the time during which an MEP performed his or her function.

The influence of the restrictions in economic activity on corruption threats

Polish economic law is full of laws which may lead to corrupt behaviour. This could be blamed on the lack of transparent rules for the operation of inspection services and a great number of permits whose receipt depends on the decision of a public official. Lengthy administrative procedures, which are ubiquitous in Poland, create a temptation to "expedite" them in an illegal way. That is why the legal regulations, particularly in this area, should be unified. It should also be considered whether a not to abolish some of the concessions and permits or at least make the process of obtaining them more transparent.

Anticorruption mechanisms in public procurement

The public procurement procedures in Poland are complicated and provide an opportunity for corruption. The problem is even more serious now, when the organisation of the European Football Championship Euro 2012 has been granted to Poland. In view of the challenge that this event poses, it is necessary to efficiently carry out some public investment projects, but in a way that will not raise any doubts as to them being free of corruption. Therefore, a number of changes should be made leading to increasing the professionalism of people working with public procurement and the procedures themselves should be made more efficient.

Eliminating corruption in local government bodies

Anticorruption regulations applying to local government officials

The main corruption threat at the level of the local government arises from the distribution of European Union structural funds. In this respect, the local government has problems similar to the national level. Here, too, there are no

clear procedures to counteract corruption, and the activities of the local government (especially those related to competition procedures) are not very transparent. There is a lot to be desired with regard to the level of involvement in making the local politicians and officials more ethically sensitive.

The quality of anticorruption regulations

A situation which is rather typical for Poland is the confusion with the submission of assets declarations by local government officials after the 2005 elections. Just before those elections, a law was introduced that was supposed to prevent the so far notorious failing to file such declarations. The legislators, however, went a step too far and decided that a sanction for failing to submit the property declaration and a declaration on the economic activity of the spouse would be revoking the mandate. The law, which in addition did not precisely specify the final date for filing the declarations, resulted in total chaos and ended up in the Constitutional Tribunal, which overruled it. What we saw was the best example of introducing provisions contrary to common sense.

Prosecuting corruption in professional self-governing bodies

The government formed by PiS, Self-Defence and LPR did not have very good relations with professional self-governing bodies, in particular with the lawyers' self-government. As a result of that, the lawyers' self-government was to be involved in the anticorruption campaign, which was shown, for instance by the idea to introduce the requirement of submitting assets declarations by advocates and legal advisors. However, advocates and legal advisors are mainly entrepreneurs and not public functionaries, and therefore an attempt to make them file property declarations could not be reconciled with the principle of equality. The possible disclosure of those declarations would constitute a radical violation of the right to privacy.

Apart from the lawyers, another group that seemed to be treated in a special way by the authorities fighting corruption were doctors. The most spectacular example of that is the above-mentioned case of Doctor Mirosław G. It could be assumed that we were dealing here with crossing the border between a praiseworthy fight against corruption and using it to weaken the position of the group in conflict with the authorities.

Conclusions

Fighting corruption is crucial, but it is also a very sensitive sphere. The means used in that fight must not violate the standards that guarantee the freedoms and the rights of an individual. Unfortunately, in our country, under the banner of fighting corruption, actions going far beyond the scope of that fight were undertaken between 2005 and 2007. The imperfect condition of Polish law is partly to blame. However, the majority of the blame should be put on the representatives of the government who used the fight with corruption as an instrument for political purposes.

Beata Roguska

Public Opinion on Democracy

Introduction

In 2005, Poles were disappointed with the rule of the left-wing Democratic Left Alliance (SLD) and vested the government of the state in Law and Justice (PiS), which promised to change the way of practicing politics, restore the respect for the law and reduce corruption. However, soon after the elections, some disturbing phenomena could be noticed, such as, for instance, restricting the freedom of the media, subordinating the state to party interests, or exerting pressure on the prosecution service. However, an important question is how the public opinion responded to this. This chapter, on the basis of opinion polls, attempts to show how the public assessed the condition of democracy in Poland in the years 2005–2007, during the rule of the coalition formed by PiS, Self-Defence and LPR (League of Polish Families).

Acceptance of the democratic order

Continuously, since 1992, Poles have recognised the superiority of democracy over other forms of government. In 2007 the acceptance of the democratic system reached 59%. However, in spite of the continuous support for democratic system, in the second half of 2005, an increase of authoritarian tendencies could be seen in the society. For the first time, more than half (52%) of respondents believed that non-democratic rule might sometimes be more desirable than democratic rule. At that time, as much as 40% of those polled were ready to agree that a strong individual holding power might turn out to be better than a democratic government. That tendency, however, grew weaker, and already in May 2007 the percentage of people ready to agree that in certain

conditions non-democratic rule might be more desirable than democratic rule fell from 52% to 36%.

Susceptibility to authoritarian slogans is related to one's education, place of residence and level of affluence. In 2007 only 17% of people with a university education supported the strong-arm rule, and 73% rejected it firmly. Moreover, people who live in large cities, with over 500,000 inhabitants, only in 17% supported authoritarian rule, and in 72% rejected it firmly. Those who have lower level of education and live in smaller towns are often much more eager to support strong leadership. Most often, such a non-democratic solution is chosen by those who are badly off. The features which are conducive to the development of authoritarian tendencies also underlie the sense of political alienation. The level of this alienation was also the highest in the period of fifteen years, exactly at the time of elections of 2005. At that time, as much as 50% of Poles agreed with a statement that for people like them it did not really matter whether the government was democratic or not. In 2007, such an opinion was expressed by 43% of respondents.

These polls show that PiS won the elections in 2005 on the wave of weakened identification with the democratic system and a growth of authoritarian tendencies. However, two years of this party's rule did not brought about an increase of anti-democratic tendencies in the society. On the contrary, the importance of democracy became more appreciated.

Satisfaction with the functioning of democracy in Poland

Poles appreciate democracy as a certain model, but their assessment of the way democracy functions in the country is rather critical. It depends on the current political events. After the period of negative assessment in the years 2002–2004, when only about 22% of respondents were satisfied with the way democracy functioned in Poland, in February 2006, positive assessments increased to 40%. That growth may be linked with the strong support for the first PiS Prime Minister – Kazimierz Marcinkiewicz. Another fall in the level of satisfaction (30%) coincided with the formation of the coalition government of PiS and LPR (League of Polish Families) and Self-Defence. Over half of Poles (54%) were dissatisfied with the way democracy functioned in Poland.

As it can be seen, the support for a democratic system remained strong during the period under study in spite of the dissatisfaction with the way democracy functions. According to experts, a reason for that was the regularity of

elections and at least partial exchange of elites, which accompanies them. It is the assessment of the politicians that, to a great extent, influenced the assessment of the functioning of democracy in Poland.

Assessment of the activity of public institutions in Poland

Assessment of the activity of the main bodies of state authority

The government of Kazimierz Marcinkiewicz (2005–2006) enjoyed strong public support, caused, among others, by the personal popularity of the Prime Minister himself. The cabinet of Jarosław Kaczyński (2007) had much worse ratings, (approximately one-fourth of the public). It did have, on the other hand, a group of strong and regular supporters. The left-wing governments of Leszek Miller or Marek Belka could not count on such support. The support for PiS was declared mainly by older people, welfare beneficiaries, and retired people. The rule of that government was critically assessed primarily by people who were better educated and better off. The percentage of the opponents of the Jarosław Kaczyński government before the early elections in 2007 was 46% of respondents.

The PiS government was positively assessed by the public, mainly for its fight against crime and combating corruption, and it received very negative assessments for its foreign policy.

The presidency of Lech Kaczyński has received much less positive assessment than the presidency of Aleksander Kwaśniewski. Poles liked the style with which President Kwaśniewski exercised his power and praised him for his foreign policy. The reason for their dissatisfaction with President Kaczyński is his excessive political involvement on the part of his brother's party and creation of numerous conflicts. Only during the first three months, the positive assessment of the presidency of Lech Kaczyński prevailed, and since then the majority of assessments have been negative.

Even worse than the opinion on the work of the government and the President were the opinions on the works of the Sejm and the Senate. A certain tendency has been established in the assessment of the Polish parliament. Since mid-1999, the Sejm and the Senate have been negatively assessed by the majority of the public. The objections raised by the respondents against the 5th Term of the Sejm (2005–2007) include primarily, acting only for the benefit of parties and politicians and taking wrong decisions. As a result, the 5th Term

was perceived as not being very representative. Every third respondent stated that there were no deputies in that Sejm who would share their opinions about the state matters. Such a low sense of representation of citizens had not been noted in Poland since 1989.

While the assessment of the parliament has been negative for many years, the assessment of local authorities has been very positive. In 2007, local authorities were positively assessed by over two-thirds of those polled. In local government elections people were less guided by party affiliations. They more rarely voted for someone as a representative of a given party and they more often voted for that person as the administrator of a given commune or town, regardless of his or her political origin. They also tended to re-elect the people who have proved to be good so far, who have performed their roles well.

Assessment of the activity of the justice system

For years, Poles had had very little confidence in the justice system. During the PiS rule, the assessment of the justice system bodies improved. In 2007, for the first time, more people assessed the work of the courts and the prosecution service positively than negatively. That corresponds with a clear growth of the sense of security of citizens. In 2001 four-fifths were of the opinion that life in Poland was not safe. In 2007 more than half of Poles believed that Poland was a safe country. Thus, the government activity in this respect enjoyed public support, and it was additionally reinforced with a real fall of crime rate. It is also symptomatic that Zbigniew Ziobro, who was often criticised for demagogy and "manual control" of the prosecution service, was in the earlier part of 2007 the most popular politician in the country. The public also positively assessed the activities of the authorities which aimed at fighting corruption. The politics itself stopped being perceived as the most corrupted sphere of life. In 2007, 35% of respondents held that view, where as in previous years it was 61%. Politics was replaced in this dishonourable position by the healthcare service. During the PiS rule, as much as 53% of respondents found it to be the most corrupt sphere of life.

Regarding the Constitutional Tribunal, it is a very important institution, safeguarding the conformity of statutory law with the Constitution. However, its activity is not widely known to the public. Until 2007, more than half of Poles were not able to assess the activity of the Tribunal. In the period under study, the number of people who recognised this institution increased. That coincided with the growth of confidence in the Tribunal. However, the opinions on the activity of this body have a political tinge because of the conflict between the Law and Justice government and the Constitutional Tribunal.

The economic situation and democracy

During the period 2005–2007 most of the society was convinced that market economy was more advanced than the building of the democratic system in Poland. Most Poles accepted the rules of the market economy, although they declared that they were aware of the negative phenomena that accompany it, such as unemployment or social inequality. Economic prosperity that the country witnessed in previous years probably had an impact on the better assessment of the economic situation by the public. In May 2007, for the first time since 1989, more people (31%) assessed the economic situation in Poland as good than as bad (24% of respondents). The better opinion on the economy coincided with the growing satisfaction with living conditions, although still most Poles described their material situation as average. The positive assessment of the economic situation and satisfaction with the living conditions were conducive to the acceptance of democratic order and were significant for assessing the functioning of democracy in Poland.

Conclusions

The crisis of confidence in political elites, which we had seen for many years, resulted in a drop in the level of identification with the existing political system. The longing for a strong-arm rule was growing. Those tendencies brought in effect the victory of PiS in the 2005 elections. The new government initially enjoyed a lot of public trust but a number of its actions (e.g. removing the popular Prime Minister Kazimierz Marcinkiewicz from power, the coalition with populist and nationalist partners LPR and Self-Defence) led to a rapid decrease in the public support for the government. Thus, PiS did not manage to overcome the crisis of confidence in political institutions. Poles negatively assessed the activities of the Sejm and the Senate. What did change was the assessment of the justice system institutions. Poles noticed the reduction of corruption in politics and an improvement in the level of safety. At the same time, probably mainly thanks to the satisfaction with the condition of Polish economy, the level of identification with the democratic system increased. As of 2007 the assessment of the way in which democracy functions in Poland is still negative, but it is improving. As a result, the authoritarian tendencies have significantly weakened, which is conducive to the reinforcement of the public legitimisation of the democratic system in Poland.

Lena Kolarska-Bobińska

Citizens' Activity and Social Protests

Introduction

The level of trust of Poles in one another and in public institutions is one the lowest in Europe. That has an impact on the low participation in civil organisations. Furthermore, the level of participation in elections is also low: 40.5% of eligible voters participated in the elections of 2005, while in 2007 – 54%. In Poland, a tendency present in many other countries (i.e. that together with the growth of the level of education in a given society the interest in political matters also grows) does not exist.

In this context, an interesting phenomenon was the revival and intensification of a certain type of activity in the years 2005–2007, namely actions and protests of the middle class. Protests related to group economic interests have been permanently present in Poland over more than a decade. A special characteristic of 2005–2007 were protests related to values. Ideology and slogans used by the ruling coalition and the confrontational style of practicing politics met with strong opposition of many groups. They have also contributed to crystallising the group and professional interests of the intelligentsia and the emerging middle class. People who had been going their individual ways and had been busy with improving their own material situation started to think in terms of a group and defend the values that were important for them. However, the emerging awareness of their own role and position was, to a great extent, a reaction to political attacks and therefore had a defensive nature.

The ruling Law and Justice party announced in their programme the necessity to change the system that had existed since 1989. In view of that party, groups

of those who were better educated and more affluent, often with links to business and special services, had held a privileged place in that system. Those "cheat-elites", as PiS politicians dubbed them, benefited from the political system transformation, disregarding the needs of the rest of the society. For the first time in Poland such a strong rhetoric was used and directed against the elites. That rhetoric, as a result, strengthened the self-awareness of the attacked social group – the intelligentsia – and provoked some defensive actions of its members. The intelligentsia did not like the authoritarianism of the governing party and was convinced that it was necessary to defend the freedom of speech and the freedom to express their own views. For the first time since 1989, the intelligentsia and the middle class felt that their values and their group interests were threatened.

The areas of conflict and dispute

During the period under study, the intelligentsia was a group that attached a lot of importance to the sphere of values. This group highly rated democratic and free market values, supported closer links with Europe and shared the idea of self-government, strong local government and self-organisation of citizens. Whereas PiS and its coalition partners declared attachment to some opposite values: moral traditionalism, scepticism towards Europe, distrust towards society and a centralised vision of the state. Therefore, already at the moment of defining the objectives and the vision for changes, the conflict was inevitable.

Numerous actions in the form of pickets, demonstrations, open letters and appeals concerned the defence of certain values. Their aim was to fight for human rights and tolerance. In the actions concerning the so-called "common good", the problems related to environmental protection, European funding, education or culture. Protests were staged against the construction of a road crossing in the Rospuda Valley, against the attempts to centralise the state and decisions concerning European funds. The intelligentsia protested against politicising public administration and against specific solutions introduced by the authorities within the public sector.

Many disputes concerned particular people. The protest against the Deputy Prime Minister and Minister of Education, Roman Giertych, received the most publicity. About 138,000 people signed an appeal to have him ousted from the ministerial post. The counter-action, which was an expression of support for

the minister, gathered 3,700 signatures. More than 20,000 people defended the slandered author of Polish economic reform, Leszek Balcerowicz.

About twenty actions concerned a dispute regarding historical memory. The main bone of contention was the vetting process. Certain situations caused a strong public response. That was the case with some press accusations of collaboration with the communist security services directed against a distinguished opposition activist Jacek Kuroń and a writer Zbigniew Herbert. There were many protest letters, supported by a great number of citizens.

Numerous groups organised actions to defend their economic interests, in particular to receive salary rises (e.g. healthcare workers, teachers, postal workers). There were also protests demanding the acceleration of the privatisation process of the protesters' own enterprises (e.g. trade union members of the Gdańsk Shipyard or Polish Airlines) and protests against politicising state-owned companies.

Forms of activity and protest

During the rule of Law and Justice, there was a whole range of forms of protests. The most frequent one was the form of a written protest.

Written protests, appeals, petitions

Written protests include primarily open letters, counter-letters, declarations, appeals, petitions and statements. The number of such protests grew significantly, and the Internet played an important role in this. In the analysed time, there were six large actions of collecting signatures via the Internet.

The scale of the phenomenon may be best described by the number of almost 138,000 signatures collected via the Internet, under an appeal to dismiss the Minister of Education, Roman Giertych. The greatest number of signatures, however, was collected in the traditional way. In May 2006, over 700,000 people put their signatures on the citizens' draft law on pensions and disability benefits from the Social Security Fund.

The following groups fought for their group interests in the form of written protests: employees, trade unions and professional groups (20 protests), scientists and academics (10 protests), teachers, students and pupils (9 protests), journalists (7 protests) and lawyers (7 protests). The protests staged by the lawyers challenged verbal attacks by the representatives of the

authorities against the verdicts issued by judges, including the judges sitting on the Constitutional Tribunal. Journalists mostly protested against the act that made them submit vetting declarations. Scientists and academics could not agree to the statements made by the ruling party members undermining their authority and questioning their moral qualifications. By written protests, teachers tried to influence the dismissal of the Minister of Education, Roman Giertych. Similarly, doctors protested against the Interior Minister Ludwik Dorn, who had threatened the striking doctors with drafting them into the army. A written protest appeared also in the field of foreign policy. Former foreign ministers wrote a letter in which they expressed their disagreement with the new course in foreign policy.

Actions, marches, picket lines

From the end of October 2005 to the beginning of May 2007, there were about thirty large strikes, pickets, marches and demonstrations in Poland. Twelve of the largest strikes mainly involved the healthcare workers, teachers, miners, postmen, railway workers and automotive industry workers. Social activity also revealed itself in the form of "sit ins" in certain places, as it was the case with the "white town" in front of the Council of Ministers' Office or the camp of environmentalists in the Rospuda Valley. The trade union were not very active in the protests.

The marches mainly concerned ideological matters. They were related to the slogans of defending tradition or promoting tolerance. There was a widely publicised case of the ban imposed on the Equality March in Poznań in 2005. The Tolerance March in Kraków in 2006 ended in riots provoked by the opponents of the march. One of the largest demonstrations was the Equality Parade (Warsaw Pride) in June 2006, in defence of the rights of gays and lesbians, which was the largest legal demonstration of sexual minorities in Poland. Over 3,000 people gathered there. The March in Defence of Life was a reaction to the previously mentioned march and attracted approximately 5,000 listeners of Radio Maryja and LPR supporters.

In the years 2005–2007, rallies supporting political parties also took place. The "Blue March" of the Citizens Platform (PO) attracted, according to police reports, about 11,000 people on 7 October 2006. Rallies supporting PiS gathered, according to the police, about 4,000 people in the case of the rally on 2 August 2006 in the Gdańsk Shipyard and 8,000 people on the rally in Warsaw. The rally in support of LPR attracted about 2,000 people. Those events were not spontaneous; however, they proceeded according to a previously prepared scenario.

Strikes

In the period under consideration, the strike in the healthcare service deserves special attention. It was of a permanent nature and it concerned not only higher wages but also certain changes in the healthcare system. Since the end of 2005, doctors and other personnel of the healthcare service resorted to different forms of protest, from taking leave on demand, through refusal to fill out death certificates to announcements of quitting their job. The nurses' strike, whose "headquarters" was the "white town", was not an expression of solidarity with doctors. Nurses, after they had received certain financial promises, ended their protest.

Teachers also went on strike, disagreeing with the freezing of wages in the so-called budget sphere. Among their demands was the expectation that the option of earlier retirement would be prolonged until the year 2011 and the demand for the dismissal of Minister Roman Giertych. At the end of May 2007, teachers in approximately 20,000 schools went on a warning strike.

In January 2007, a 24-hour strike was held in mines in Silesia. The miners protested against the blockage of employment in mines and the reduction of real wages. They also demanded a right to earlier retirement.

The expectation of a pay rise was also the reason for strike of postmen. At a certain point, half of the 25,000 postmen went on strike. The strike ended at the end of 2006 and resulted in promises of a rise in wages from the new year on.

Conclusions

Protests of various social groups have taken place in Poland for many years. However, they have mainly concerned economic interests of various groups. That is why the numerous protests related to values and matters connected with governing the state and the common good, should be treated as specific for 2005–2007. It was a response to the radical slogans used by the ruling camp and to the confrontational way of practicing politics selected by them. As a result, the individuals who had so far been atomised started to think of themselves in terms of a group.

Various questions appear whether the growing awareness of their own values and interests and the self-defensive reactions will lead to a better self-organisation of various groups and whether the growing sense of influence, created by the participation in protests, will translate into greater

civil and political activity. It is difficult to answer these questions, although, definitely, all that did result in the greater participation in the elections in 2007. Will it, however, lead to a better self-organisation of different circles and to a greater interest in public affairs? Only time will show. It is also difficult to say if the growing awareness will also lead to better self-restraint in those groups in which certain actions contrary to professional ethics took place. It was often the case that such behaviour was not sufficiently condemned by the members of their own group. The key issue is whether the debate that has been in progress since 2005, on the functioning of democracy and its institutions, has made the emerging middle class aware how big their role in shaping the face of Polish democracy really is.

Grzegorz Makowski

Government Policy Towards Non-Governmental Organisations

In a democratic system, citizens must have the right to organise themselves and to identify and solve the problems of their own community. This is the essence of the civil society. That is why an analysis of the government policy towards non-governmental organisations implemented in the years 2005–2007 is so important.

The situation of non-governmental organisations

There are approximately 65,000 non-governmental organisations in Poland, including about 40,000 associations, 6,000 foundations and 17,000 other organisations (such as for instance, religious organisations, churches, employers' organisations, trade unions, physical culture and sports associations). All those entities form the so-called Third Sector. Even though the very number of the organisations seems large, in reality not much more than half of them are active and the vast majority is in a very poor financial situation. What is worse, in recent years, the indicator of the growth of the number of associations and foundations has stopped and every year fewer organisations are formed. Furthermore, the existing organisations do not attract the attention of the public. Over a year, only every fourth Pole devotes his or her time for work for the benefit of a non-governmental organisation. Few people are interested in donating 1% of their income tax for the benefit of a selected organisation of public benefit. Even though such an option has been available since 2004, only a few percent of taxpayers use it.

The picture of the non-governmental sector is therefore not very optimistic, although the law that regulates it seems to be appropriate. The Law on associations, the Act on foundations and the Act on organisations of public benefit and on the voluntary sector clearly define the situation of non-governmental organisations, emphasise their status of independent entities, raise their prestige and specify the basic conditions for their cooperation with public administration. There are regulations encouraging taxpayers to make donations for non-governmental organisations.

This short analysis gives us the current picture of the condition of non-governmental organisations. In order to fully understand the ideas which governed the actions of the cabinets formed by PiS and the coalition parties (Self-Defence and LPR), it is worth taking a closer look at the situation of the non-governmental sector before the year 2005.

Non-governmental organisations and the state policy before the year 2005

Former cabinets (similarly to the last PiS cabinet) lacked the systemic thinking about the civil society sector. The only bright exception was the period when the sector of non-governmental organisation became the object of interest of Jerzy Hausner – Minister of Economy, Labour and Social Policy and Deputy Prime Minister in the governments of Leszek Miller and Marek Belka (2001-2005). It was mainly thanks to him that in 2003 the Act on the activity of public benefit and the voluntary sector was passed, which identified the basic mechanisms of cooperation between public administration and civil organisations. The Act also introduced other forms of using public funds allocated for the activities of civil organisations. The Council of the Public Benefit Activities was also established, which in fact, in a number of situations, represented the interests of the whole third sector.

In the context of the development of the civil society and the system of assistance to non-governmental organisations, great expectations were connected with Polish accession to the EU. After the accession, the organisations hoped that a special “Civil Society” programme would be launched. The cabinet of Marek Belka started working on the programme in 2005. The works, however, were abandoned when Law and Justice and its coalition partners took power.

The civil sector in the programme declarations of Law and Justice

The rule of PiS, Self-Defence and LPR was characterised not only by the lack of vision for the development of the civil sector, but also by worsening the relations between the authorities and non-governmental organisations. That, however, was not a surprise. The pre-election declarations of the parties which eventually came into power after the 2005 elections, and particularly Law and Justice, had already indicated that this would be the case.

Pre-election declarations – the Law and Justice programme

The PiS electoral programme "4th Republic. Justice for all" for 2005 said very little about non-governmental organisations. If they were mentioned at all, it was in the context of some specifically defined objectives and tasks set by the authorities, for instance: activities supporting the improvement of Polish relations with Ukraine and Belarus or the promotion of appropriate parent attitudes. Paradoxically, such little interest in the role of civil organisations is difficult to reconcile with the fact that as late as in 2005, PiS described their vision of the state as "civil". PiS politicians must have noticed that inconsistency and abandoned that term for the sake of the term "solidarity-based state".

Non-governmental organisations in the "solidarity-based state"

After the elections, the programme of PiS assumed the form of the document "Solidarity-based state of caring citizens". That document said even less about non-governmental organisations than the pre-election programme. However, just a glance at the vision of the solidarity-based state revealed a lot. It was supposed to be, according to the promises of PiS politicians, a state with a strong administrative apparatus, promoting national traditions, ensuring, first of all, security and therefore developing controlling institutions, law enforcement agencies, and special services. The solidarity-based state was not intended to be a state that trusted its citizens and allowed them to identify their own objectives, problems and modes of action; thus it did not promote civil attitudes and self-organisation.

Civil society in the policy speeches of PiS Prime Ministers

In the policy speeches of the two Prime Ministers which came from PiS, Prime Minister Kazimierz Marcinkiewicz and Prime Minister Jarosław Kaczyński, very little was said about non-governmental organisations. However, both of those speeches and other statements of PiS representatives pointed to a vision

of civil society whose proper functioning seemed to depend only on the strong authority of the state. Such a vision was difficult to reconcile with the modern understanding of civil society. Prime Minister Jarosław Kaczyński belittled the real achievements of Poles in the area of building civil society. One could often come across statements that civil society in Poland, in the shape in which it was built, served only the political interests of dissident groups originating directly from the communist period.

Activities of the PiS governments towards the civil sector – direction of change, opportunities and threats

Under the coalition agreement, the Ministry of Social Policy became a fiefdom of the politicians of the populist Self-Defence. This ministry holds the most responsibility for the activities related to the non-governmental sector. Giving this ministry away was a clear signal that the PiS-led cabinet did not treat the development of civil society as a priority. Legislative initiatives prepared by the ruling coalition very rarely took into account the opinion of the non-governmental community, even if they directly affected the situation of those organisations. Also the activity of the institutions of social dialogue was significantly weaker during the rule of Law and Justice.

Council for the Public Benefit Activities

The deputy minister from the Ministry of Social Policy responsible for the cooperation with the council for the Activity of Public Benefit (and through the Council the cooperation with the whole non-governmental sector), was severely incompetent in this matter. Inept activities of the Ministry, as for instance the belated consultations of the draft amendments to the Act on foundations and incessant problems with access to information, did not allow the members of the Council to perform their duties properly. That eventually led to extreme dissatisfaction within the Council, which then filed a complaint with the Minister of Labour. The complaint did not bring any effect.

The Parliamentary Group for non-governmental organisations

The Parliamentary Group for non-governmental organisations was formed during the PiS rule and consisted of representatives of PiS, PO and SLD. It was one of the few initiatives supported by the politicians of Law and Justice which served the purpose of developing civil dialogue and was addressed at non-governmental organisations. However, the government did not seem to notice the existence of this group and very rarely took notice of the views of the deputies, senators and non-governmental organisations gathered in this forum for change.

Public hearings

The Act on lobbying in the legislative process, passed in the previous term of Parliament, came into force in March 2006, when PiS was already in power. It introduced a very important institution to the legal system contributing to the building of civil dialogue, namely the public hearing. However, neither the government nor the deputies of the parliamentary majority seemed to be interested in making proper use of it. Over the two years of PiS rule, the public hearing was used only six times, usually in the case of acts of minor significance. In the summer of 2006, at the last moment, the public hearing of a very important draft law changing the election law for local government elections was cancelled. A positive exception was a very substantive and efficiently carried out Sejm hearing on the amendment of the Act on public benefit activity. That, however, happened just before the elections, in September 2007.

Legislative initiatives of the Law and Justice governments

There were certain positive aspects of the PiS government activity for the development of the civil sector. One of them was continuing, in a very open way, of the work on the amendment of the Acts on the public benefit activity and on the voluntary sector. They contained a number of good proposals aiming at, among others, the simplification of the procedures of transferring funds to organisations. On the other hand, the draft amendment also contained some rather unfortunate solutions, for example restricting the possibility of conducting economic activity by public benefit organisations. An equivocal assessment of this amendment is, however, impossible since it was never passed.

The history of a draft proposal for changes in the Act on foundations prepared by the Chancellery of Prime Minister Kaczyński was completely different. That draft had not been sufficiently consulted with the non-governmental sector and completely ignored the real problems that foundations come across in their operations. It focused only on increasing control over foundations. It could have caused some far-reaching restrictions in the powers of the founder and the foundation management board and could have made it difficult for them to conduct economic activity.

The government was not very eager to propose legal changes that could solve the acute problems of the organisations. An example of that may be the amendment of the Act on the tax on goods and services, awaited by the organisations, which was expected to abolish or minimise the tax imposed on goods and services provided by companies for charitable purposes. In spite of

the announcements and promises, such an amendment had never been prepared. A draft for changes in the Act was only submitted by senators from the opposition.

In spite of the promises of the government, the funds transferred to the Civil Initiatives Fund were not increased. The Fund provides funding for valuable projects implemented by non-governmental organisations. In the draft budget for the year 2008, prepared at the end of the rule of the Jarosław Kaczyński's cabinet, funds for that purpose had not been allocated at all.

Conclusions

Already in the pre-election announcements of the parties that ruled in the years 2005–2007 the need to develop the civil sector was not noted. That period, however, was not only a continuation of a policy of the lack of policy towards the civil sector. Even when the government or the coalition parties initiated some actions in this area, they were subordinated to the extremely statist vision of public life advocated by PiS politicians.

That situation was not favourable for the development of civil society and non-governmental organisations. It certainly did not solve the problem of apathy and reluctance of citizens to participate in public life. The announcements of the PiS cabinet concerning changes in the area of civil activity, included in the government project "Strategy of supporting the development of civil society for the years 2007-2013" prepared at the end of its rule, was belated and had no chance to become anything more than empty promises.

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